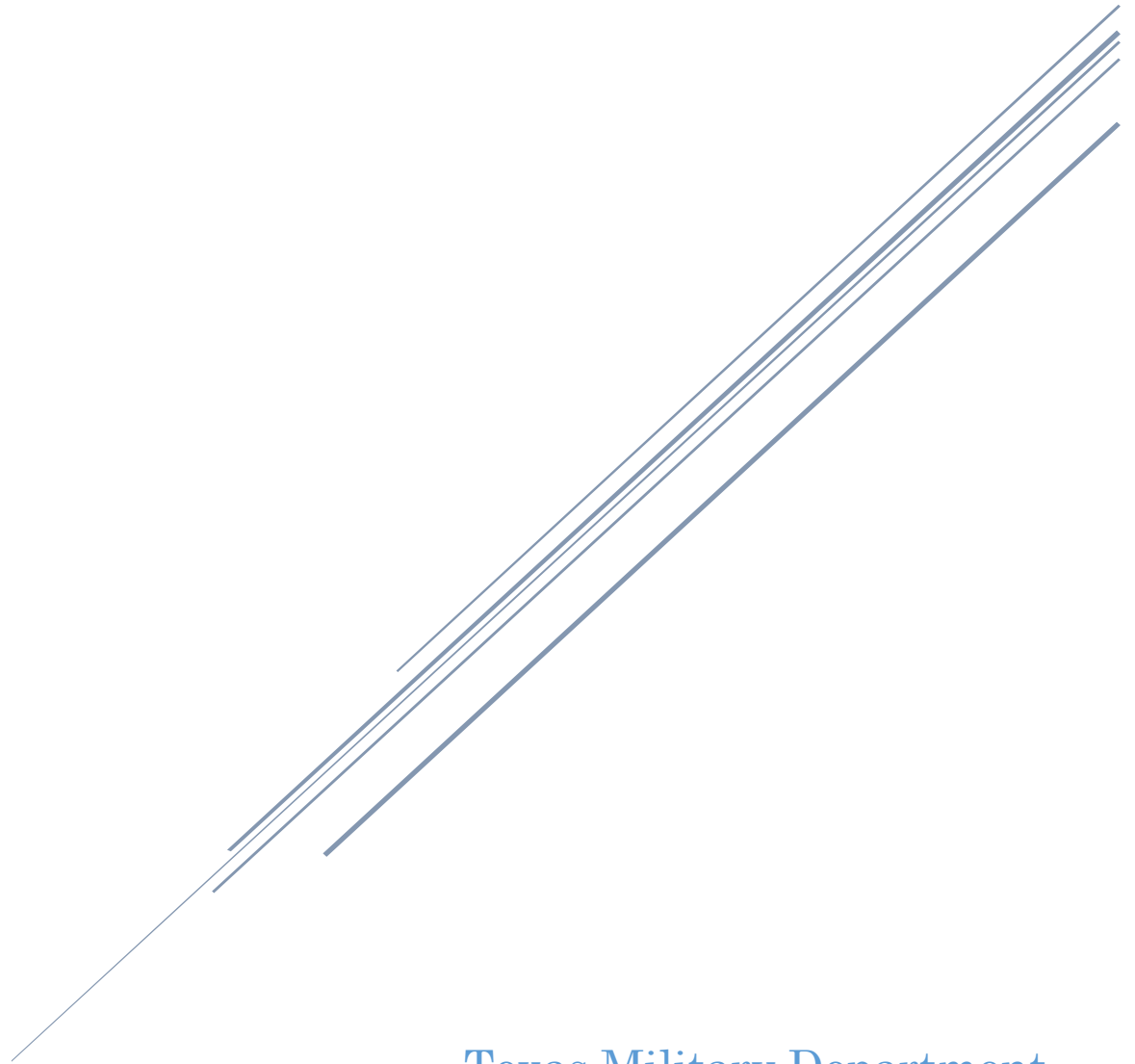


# STATE EMPLOYEE POLICIES & PROCEDURES

Handbook

Number 1400.01



Texas Military Department



# TEXAS MILITARY DEPARTMENT STRATEGY

## VISION:

*AMERICA'S PREMIER STATE MILITARY COMPRISED OF MISSION-READY PROFESSIONALS FULLY ENGAGED WITH OUR COMMUNITIES, AND RELEVANT THROUGH THE 21ST CENTURY.*



## MISSION:

*PROVIDE THE GOVERNOR AND PRESIDENT WITH READY FORCES IN SUPPORT OF STATE & FEDERAL AUTHORITIES AT HOME AND ABROAD.*



### **PEOPLE FIRST:** *Invest In Our Human Capital*

- Diverse & Engaged Force Sustained Through Effective Retention & Recruiting*
- Trained Ethical Professionals*
- Resilient Professionals & Families, Supported By Robust Services*
- Clearly Communicated Opportunities For Professional & Personal Development*

### **RELEVANT & READY:** *Provide Right Force At The Right Time*

- Force Structure Optimized For Federal & State Missions*
- Modern Training Areas & Facilities That Support Our Mission*
- Effective Resource Management & Protection*
- Enhanced Joint, Interagency, Intergovernmental & Multinational Capabilities*

### **COMMUNICATE & PARTNER:** *Deliver Our Message & Build Lasting Relationships*

- Effective Communication Assets & Channels*
- Partnered & Informed Communities*
- Engaged & Educated Government Partners*
- Strong Department of Defense Relationships*

# State Employee Policies & Procedures Handbook

Number 1400.01

1 January 2018

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Texas Military Department (TMD)  
2200 W. 35<sup>th</sup> St  
Austin, TX 78703

OPR: State Human Resource

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**Summary.** The Texas Military Department (TMD or “the department”) developed this Employee Handbook of Policies and Procedures to:

1. Provide formal policies and procedures for state employees;
2. Help employees understand their responsibilities as a TMD state employee and the department’s expectations about work and personal conduct;
3. Help employees be aware of available employment related benefits and services; and
4. Help assure consistent interpretation and application of established policies.

The information in this handbook is current as of the date of the publication date but is subject to change as statutes, regulations, and department policies are modified. The Adjutant General reserves the right to change the provisions of this guide at any time and without notice. In the event of a discrepancy between this handbook and more recent department rule, policy or procedure, the most recent publication prevails.

**Applicability.** TMD personnel (including state employees, state supervisors and managers, and military personnel who supervise state employees) are responsible for knowing and following all policies contained in this handbook.

**Management Control Process.** No handbook or policy manual can address every possible employment related situation that may arise therefore, TMD management may:

1. Act within its discretion to resolve issues that are not adequately addressed in this handbook; and
2. Depart from written policy, when necessary to address the circumstances of a particular situation, if the departure is approved in advance by the Adjutant

General of his designee.

**Proponent and Exception Authority.** State Human Resources

**Supplementation.** Supplementation of this handbook or establishment of command and local forms on (subject of SOP) is prohibited without prior approval from the Adjutant General (TAG), through the State Human Resources (NGTX-RMH), P.O. Box 5218, Austin, TX 78763-5218.

**Suggested Improvements.** Users are invited to send comments and suggested improvements concerning this handbook directly to State Human Resources (NGTX-RMH), P.O. Box 5218, Austin, TX 78763-5218.

**Distribution. A**

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## DEPARTMENT MISSION

The mission of the Texas Military Department is to provide the Governor and President with ready forces in support of state and federal authorities at home and abroad.

## DEPARTMENT VISION

America's premier state military comprised of mission-ready professionals fully engaged with our communities, and relevant through the 21<sup>st</sup> century.

## DEPARTMENT VALUES

### **DUTY:**


Bear true faith and allegiance to the state and nation. Cultivate an environment for all to excel. Prepare mentally, physically, and spiritually to deploy at home and abroad. Be ready when called.

### **HONOR:**


Hold the public trust in the highest regard, exceed standards and expectations. Act with understanding, innovation, resourcefulness, flexibility, and urgency. Do all you can, where you are, with what you have and always place the welfare of those you lead first.

### **TEXAS:**

Embrace the courageous spirit of our people, history, and culture.

Signed:   
Bill Wilson  
Executive Director

Date: 12/11/17

Approved:   
John F. Nichols  
Major General TXANG  
Adjutant General

Date: 12/14/17



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# CHAPTER I

## GENERAL INFORMATION

### AT-WILL EMPLOYMENT

TMD employs all state employees on an at-will basis. This means that: (1) all state employees serve at the pleasure of the Adjutant General or designee, the Executive Director; (2) employment is for no definite period; and (3) either TMD or a state employee may terminate the employment relationship at any time, for any reason or no reason, other than an illegal reason by TMD, without liability. Nothing in this handbook (or other policy statement, directive, or any written or verbal communication with regards to employment or job assignment), should be construed to imply the existence of contractual employment rights or a guarantee of continued employment. Further, the use of progressive discipline does not alter an employee's at-will status.

### INTRODUCTORY PERIOD

TMD recognizes an initial six-month probationary period of employment. During this time an individual is considered to be working toward non-probationary employment status. This introductory period is a time for becoming familiar with TMD's mission; getting to know fellow employees and supervisors; and learning the tasks involved in the job. At the conclusion of the six-month period, if the employee has performed satisfactorily, he or she will no longer be considered as a probationary status employee. Completion of the introductory period does not guarantee continued employment and does not change the at-will nature of the employment relationship.

### OFFICE HOURS

Except as provided in this policy, standard work hours for TMD state employees are 8:00 a.m. to 5:00 p.m., Monday through Friday. A supervisor may approve flexible work hours for an employee for hours other than 8:00 a.m. to 5:00 p.m. Monday through Friday, in accordance with the TMD workweek policy. However, each supervisor must ensure that sufficient staff is present to conduct business during standard work hours. A supervisor may return the employee to standard hours at any time to address departmental work load or the employee's abuse of his or her approved flex schedule.

An employee seeking approval of flex hours must complete the work week declaration form and submit it to his/her supervisor for approval. The approved form must be forwarded to state Human Resources to be filed in the employee's personnel records.

(The Work Week Declaration form is included in the attached Appendix)

### **LUNCH TIME**

Employees who work longer than four (4) hours per day are provided an unpaid one-hour lunch. A shorter lunch period may be permitted under a flex work schedule. Lunch periods are varied depending on the needs in the work area. An employee and his/her supervisor should determine a lunch period schedule that works for the employee and department, based on the needs of the department. As a general rule, the lunch period is not intended to be taken at the start or end of the day.

Non-exempt employees under the Fair Labor Standards Act (FLSA) are expected to take the full allotted time for lunch. FLSA non-exempt employees shall not perform any work during regularly scheduled lunch periods, unless specifically requested or authorized to do so by a supervisor or manager. In that event, the employee's lunch period will be rescheduled.

Employees are expected to return to work on time at the end of their designated lunch period, unless other arrangements are approved by their supervisor.

### **BREAKS/REST PERIODS**

Employees may take two fifteen-minute breaks (rest periods) each day. These breaks will be scheduled in mid-morning and mid-afternoon. The scheduling of all breaks is subject to the supervisor's discretion, based on the staffing needs at the time. Employees working in an area where breaks are not directly assigned must coordinate breaks with co-workers to maintain adequate coverage at all times. Employees are expected to return to work on time at the end of any break.

Breaks are not intended to be:

1. Accumulated from day to day (if not taken, the time is lost);
2. Combined with other time off;
3. Used to cover late arrival or early departure from work;
4. Added to your lunch hour; or
5. Combined into one 30-minute break.

Supervisors may ask employees to change or postpone breaks in order to finish a particular task or project.

### **DRESS CODE**

It is the policy of the Adjutant General that all employees dress in an appropriate manner for the job being performed and that they adhere to appropriate appearance and grooming standards. Supervisors have the authority to determine what is appropriate. Regardless of the job assignment, any attire that is of extreme design, revealing in nature or that

conveys a message of a derogatory or offensive nature, either through language, logos, or symbols, is strictly prohibited. As representatives of this agency, proper dress and grooming are essential to project a positive image. In addition to the guidelines below, employees must comply with any additional guidance provided by the Adjutant General or designee.

**A. Dress**

(1) Employees in highly visible positions, or those who have daily contact with the public, and/or senior management must dress in appropriate business attire.

(2) Employees may wear casual business attire appropriate for the task being performed. However, all attire must conform to the minimum standards described in this policy.

(3) Employees performing physical training (PT) may wear appropriate exercise clothing, however, they must change to the appropriate attire before returning to work. An employee may not work during regular office hours while dressed in PT clothing.

(4) Employees performing yard details, clean-up details, physical labor in enclosed areas, etc., may wear clothing as directed by the person in charge of the detail. However, they must not visit other offices or building not connected with these duties.

**B. Appearance**

All employees must maintain an appropriate appearance. Clothing must be in good repair and neat at all times.

**C. Grooming**

(1) All employees should be well groomed and neatly trimmed.

(2) An employee may have facial hair provided it is neatly trimmed and well groomed.

**D. Supplementation**

Local supplementation of this policy by directors managing programs with specific dress or uniform requirements related to the position or job functions is authorized. However, supplementation must not detract from the intent of this policy and must be published in written form. A copy of any approved program specific dress code for state employees must be provided to the state Human Resources Office.

## **WORKPLACE CONDUCT & EMPLOYEE DATING POLICY**

Every employee is a representation of TMD and is expected to carry out his/her responsibilities and interact with others. While it is recognized that some disagreements or differences of opinion may arise as we manage our day-to-day responsibilities, every TMD employee is expected to treat others in the workplace with respect, courtesy, fairness and dignity. This means, but is not limited to, the following:

- A. **WATCH YOUR LANGUAGE.** Profanity, offensive language, threats (including jokes about violence) or provoking gestures directed at subordinates, fellow employees, or supervisors goes against TMD principles for a work environment free from harassment, intimidation and insubordination.
- B. **BE RESPECTFUL, COURTEOUS, AND PROFESSIONAL AT ALL TIMES.** If there is a conflict, do not get personal in your remarks.
- C. **DO NOT ARGUE WITH YOUR SUPERVISOR(S).** You may respectfully disagree with your supervisor, and in this case your supervisor should **hear you out**.
- D. **RESPECT WHAT IS TOLD TO YOU IN CONFIDENCE.** If there is a work-related reason for TMD to be aware of sensitive information, it should be shared only on a “need to know basis” with a manager or state Human Resources (in other words, do not gossip about it).
- E. **ADDRESS GRIEVANCES OR CONCERNS THROUGH PROPER CHANNELS.** Issues should be raised in good faith through the employee’s chain of command if possible; but may be presented to other TMD management, the TMD Ombudsman or to state Human Resources. Grievances should be dealt with promptly and fairly.
- F. **RETALIATION IS STRICTLY PROHIBITED.** It violates TMD policy for any employee to retaliate against another for seeking to address grievances or concerns.

### **Employee Dating Policy**

TMD strongly believes that a work environment where employees maintain clear boundaries between employee personal and business interactions is most effective for conducting business, enhancing productivity, and is consistent with Department values. Although this policy does not prevent the development of friendships or romantic relationships between co-workers, it does establish boundaries as to how relationships are conducted during working hours and within the working environment.

Individuals in supervisory or managerial roles, and those in other positions of authority in the workplace, are subject to more stringent requirements under this policy due to their status as role models, their access to sensitive information, and their ability to affect the terms and conditions of employment of individuals in subordinate positions.

This policy does not preclude or interfere with the rights of employees protected by any applicable statute concerning the employment relationship; and establishes the following guidelines:

1. During working time and in working areas, employees are expected to conduct themselves in an appropriate workplace manner that does not interfere with others or with overall productivity.
2. During nonworking time, such as lunches, breaks, and before and after work periods, employees engaging in personal exchanges in nonwork areas should observe an appropriate workplace manner to avoid offending other workers or putting others in an uncomfortable position.
3. Employees are strictly prohibited from engaging in physical contact that would in any way be deemed inappropriate by a reasonable person while anywhere on TMD premises, whether during working hours or not.
4. Employees who allow personal relationships with co-workers to adversely affect the work environment will be subject to the appropriate provisions of TMD's disciplinary policy, including counseling for minor problems. Failure to change behavior and maintain expected work responsibilities is viewed as a serious disciplinary matter.
5. Employee off-duty conduct is generally regarded as private, as long as such conduct does not adversely impact the workplace. An exception to this principle, however, is romantic or sexual relationships between supervisors and subordinates.
6. Any supervisor, manager, executive or other agency official in a sensitive or influential position with TMD must disclose the existence of a romantic or sexual relationship with another co-worker. Disclosure may be made to the immediate supervisor or the Director of State Human Resources. This disclosure will enable TMD to determine whether any conflict of interest exists.
7. With regard to Paragraph 6, when a conflict-of-interest problem or potential risk is identified, TMD will work with the parties involved to consider options for resolving the problem. The initial solution may be to make sure the parties no longer work together on matters where one is able to influence the other or take action for the other. Matters such as hiring, firing, promotions, performance management, compensation decisions and financial transactions are examples of situations that may require reallocation of duties to avoid any actual or perceived reward or disadvantage. In some cases, other measures may be necessary, such as transfer to other positions or departments.

8. With regard to Paragraph 6, if one or both parties refuse to accept a reasonable solution or an offer of alternative position, if available, such refusal will be deemed a voluntary resignation.

9. Failure to cooperate with TMD to resolve a conflict or problem caused by a romantic or sexual relationship between co-workers or among managers, supervisors or others in positions of authority over another employee in a mutually agreeable fashion may be deemed insubordination and cause for immediate termination. The disciplinary policy of TMD will be followed to ensure fairness and consistency before any such extreme measures are taken.

10. The provisions of this policy apply regardless of the sexual orientation of the parties involved.

11. Where doubts exist as to the specific meaning of the terms used above, employees should make judgments on the basis of the overall spirit and intent of this policy.

12. Any concerns about the administration of this policy should be addressed to the Director of State Human Resources.

### **PAY PERIOD**

The pay period is based on the calendar month. Payday is the first working day of the month following the pay period. New employees who begin employment after the fifteenth of the month, and employees in leave without pay (LWOP) status for a portion of the month who are placed on supplemental payroll, will generally be paid by the tenth calendar day of the following month.

### **COMMON ACCESS CARDS**

The Common Access Card (CAC) is the standard identification card for active duty uniformed service personnel, selected reserve, Department of Defense civilian employees, state employees, and eligible contractor personnel. It is also the principal card used to enable physical access to buildings and controlled spaces, and it provides access to Department of Defense computer networks and systems. State employees must pass a security clearance to obtain a CAC. The security clearance process involves a National Agency Check and Inquiry (NACI) and fingerprinting. This process is normally initiated at the time of hire, by completion and submission of the required forms to the Office of Personnel Management. For positions that require use of a CAC, continued employment with the agency is subject to the employee completing the security clearance.



## **USE OF STATE PROPERTY**

State property may only be used for official state purposes and should not be used for personal purposes. Any employee who misuses or makes unauthorized use of state property, including information system resources, is subject to disciplinary action up to and including termination; and, when appropriate, criminal prosecution.

### **Vehicles**

State-owned or state-leased motor vehicles may be used only for official state business. The use of such vehicles to commute to and from work is acceptable if it is approved by the Adjutant General. The names and job titles of these employees and the reasons for such authorization must be included in an annual report to the Office of the Governor, Legislative Reference Library, State Auditor's Office, and the Legislative Budget Board.

### **Telephones**

All long distance calls will be made utilizing the TMD designated phone system and the employee's assigned long distance code, if any. Incidental personal use of state telephones is permitted for local calls provided such use does not interfere with performance of duties and responsibilities. Accepting a collect call for personal use or from persons other than a current TMD employee in a travel status is prohibited and will result in disciplinary action.

### **Internet and Personal Computers**

As with the telephones, personal computers and electronic mail systems are provided for business use by TMD employees, not personal use. TMD employees may use the Internet for job-related purposes. Further, because TMD benefits by permitting employees to use personal time to develop skills and identify resources, incidental personal use of the Internet for non-commercial purposes on personal time is permitted. However, such use may not adversely affect business uses or productivity and employees may not incur any additional cost on behalf of TMD through their Internet use. "Personal time" includes lunch, scheduled breaks, and time before and after regular working hours. Use of the Internet for personal purposes is not appropriate on state time.

### **Email**

A specific email policy may be published apart from this handbook. Generally, however, email should be used only for legitimate state business. However, brief and occasional email messages of a personal nature may be sent and received subject to the following:

**1. General Guidelines.** Personal use of email is a privilege, not a right. Abuse of this privilege may result in appropriate disciplinary action. Employees must know that all email is recorded and stored along with the source and destination. Management has the ability

and right to view employees' email. Recorded email messages are the property of the agency and therefore the property of the taxpayers of the state of Texas. Thus, they are subject to the requirements of the Texas Public Information Act and the laws applicable to state records retention. Employees should be aware that when sending an email message of a personal nature, there is always the danger of the employees' words being interpreted as official agency policy or opinion. Therefore, when an employee sends a personal email, especially if the content of the email could be interpreted as an official agency statement, the employee should use the following disclaimer at the end of the message:

*"This email contains the thoughts and opinions of (employee name) and does not represent official Texas Military Department policy."*

If the content of the email contains sensitive or confidential information, the employee should use the following at the end of the message:

*"This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or information contained in the message."*

*If you have received the message in error, please advise the sender by reply email and delete the message."*

**Restrictions.** Personal email must not impede the conduct of state business; only incidental amounts of employee time—time periods comparable to reasonable breaks during the day—should be used to attend to personal matters. Racist, sexist, threatening, or otherwise objectionable language is strictly prohibited. E-mail shall not be used for personal monetary interests or gain. Employees shall not subscribe to mailing lists or mail services strictly for personal use. Personal email shall not cause the state to incur a direct cost in addition to the general overhead of email.

**2. Employer's Right to Access.** State and federal law allow employers to monitor employee email for legitimate business purposes. Additionally, email may be subject to public access as a public record, or to legal subpoena. E-mail may be subject to audit by the Information Technology department or as directed by executive management.

### **Property Accountability**

TMD employees are responsible for state property or equipment assigned to them or in their care. The use of state property or equipment for any reason other than state business is prohibited by law. Employees may be financially responsible for lost equipment and/or inventory.

## OFFICE CLOSURE INFORMATION

### **Purpose**

To ensure uniform and coordinated procedures for the closure of TMD offices and the treatment of state employee absences from work during periods of inclement weather and other emergencies.

*Inclement weather* means weather events such as ice, sleet, hail, snow, flooding, tornado warnings, hurricanes, earthquakes or natural disasters.

*Other emergency conditions* may include situations such as loss of utilities, power failures, fires, acts of terrorism, building system failures, or other similar critical situations or man-made disasters.

### **Policy**

It is the policy of TMD that whenever it is determined that the health or safety of employees would be placed at risk or that conditions or events prevent performance of regular operations or services of TMD, closure of the department or a specific facility may be deemed necessary.

In the event that a facility needs to be closed, it is the responsibility of the Officer-in-Charge or facility manager to report the facility closure and to submit a request through the Executive Director or his or her designee (the Deputy Executive Director) for the need or use of paid emergency leave for state employees affected by the closure.

The installation commander, facility manager, or the Officer-in-Charge (hereinafter known collectively as the OIC) determines if a closure is necessary.

### **Inclement Weather**

When determining whether closure is appropriate, the OIC may consider the closure status of the local school district in which the facility is located. The OIC notifies the TMD Joint Operations Center (JOC) (512) 782-5544, of the date, time, and duration of the closure. Facilities may be directed to close, evacuate, or reopen by an individual of higher rank, including the Executive Director. An OIC may direct that work is to be curtailed or that specific personnel implement a continuity of operations plan and work remotely. The OIC determines when a weather threat has passed and at what time operations may resume. Tenants of a facility shall follow the direction of the OIC. The Garrison Commander is the OIC for TMD Headquarters at Camp Mabry.

**Notification**

Announcements regarding closing or reopening of facilities are communicated on the TMD public website, TMD App, through command distribution, official TMD social media, and on local news.

Closure notification by email or electronic media alone does not excuse personnel from duty. Supervisors are responsible for ensuring personnel are notified of closures and when a facility will reopen.

During non-duty periods where there is emerging severe weather, individuals should monitor local media, the TMD public website, TMD App and/or the official TMD social media outlets for closure information. Individuals should contact their supervisor or chain of command for guidance if no information is provided.

During a period of closure, TMD personnel should monitor the official TMD website, TMD App and media outlets and maintain contact with their supervisor. When released during the workday, or directed not to report for duty due to severe weather, each organization at a facility affected by severe weather should forward a memorandum or email to the state Human Resources Director documenting the closure, and requesting the appropriate leave for state employees. The memorandum should include a roster of the state employees by name, and the dates and the amount of leave requested.

**Reporting to Work**

If there is no official notification of a delayed opening or office closure, employees are expected to report to work on time. If an employee chooses not to report to work during inclement weather or other emergency conditions, the employee is expected to make a reasonable effort to reach his or her supervisor to discuss his or her individual circumstance. Absent an official closing of the office, an employee's absence will be charged to his or her personal annual leave, compensatory time, or will be unpaid.

Regardless of whether a facility is deemed to be open or closed because of inclement weather or other emergency situation, it is the employee's decision as to whether he or she will report to work during such conditions. Employees should use common sense and make the best assessment of the safety and practicality of the situation. An employee should report to work only if he or she knows it is possible to arrive at work safely.

**Treatment of Employee Absences**

An employee who is on previously scheduled personal leave when the office closure, early dismissal, or delayed opening has been authorized, will be charged with such leave as scheduled.

Employees who are not directly affected by the conditions warranting closure, or who are not scheduled to work during such times, shall not accrue any right to, and shall not be compensated in any manner for, any absence that may be authorized for the employees directly affected.

Employees granted Emergency Leave shall record the approved leave hours on their CAPPs timesheet using the appropriate Time Reporting Codes and including the reason for the leave in the comments section. For a list of Time Reporting Codes, refer to [tmd.texas.gov/capps](http://tmd.texas.gov/capps).

## **TRAVEL REIMBURSEMENT**

Work related travel expenses will be reimbursed as provided by law and TMD's travel policy and procedures published separate from this handbook. Generally, travel reimbursement is limited by the state and conditions and restrictions apply to it. Reimbursement rates are established by the Legislature and administered by the Comptroller of Public Accounts (CPA). All travel must be performed in conjunction with official business of the department. Employees required to travel should review TMD's travel policy.

Rules common to all state agencies are published by the Comptroller of Public Accounts and posted on the CPA website under "Textravel." Employees may be required by management to travel in order to achieve the objectives of the department.

It is the employee's responsibility to file a travel reimbursement claim in compliance with the travel rules and TMD travel policy. Failure to do so may result in delay of payment or disapprove of the claim. Filing a fraudulent claim may result in dismissal and possible legal action.

No expenditures for alcoholic beverages will be reimbursed, as this is specifically prohibited by law.

## **SAFETY**

### **Work Place Safety**

TMD is committed to workplace safety and prohibiting violence in the workplace. TMD expressly prohibits and will not tolerate statements or behavior that can be considered as direct or indirect threats to the safety of other individuals in the workplace or persons with whom the department conducts business. TMD will assume all threats of violence are legitimate, including those purportedly made in jest, and will conduct appropriate investigations.

It is the policy of TMD that:

- All employees shall be provided with a safe, non-violent work environment.
- Every employee has a responsibility to report perceived or actual incidents of violence.
- Every report of perceived or actual incidents of violence shall be thoroughly investigated.
- Appropriate sanctions shall be applied to persons who violate this policy.

Acts or threats of violence that are prohibited include, but are not limited to, the following:

- Physical acts of violence inflicted on other people, including assault and battery, homicide, attempted homicide, and rape;
- Written or verbal threats of violence;
- Threatening conduct, such as harassing or intimidating others, displaying intense anger, and showing off or actually brandishing a weapon or item which could be used as a weapon;
- Bomb threats;
- Deliberate destruction of equipment and property, including arson; and
- Other actions that communicate a direct or indirect threat of physical or psychological harm.

### **Reporting Procedures**

In the event of a perceived or actual incident of violence, an employee should immediately call 911 then report the incident(s) to a member of the management team or facility security guard if available.

### **Responsibility**

The State Safety or Risk Management Officer has the responsibility for:

- Developing an action plan for identifying preventive measures to promote a safer work environment;
- Developing specific actions to take in the event of a violent incident; and
- Educating managers and staff regarding workplace violence, including early warning signs of potentially violent behavior, procedures for reporting incidents, and steps to be followed in responding to and investigating an incident of workplace violence.

### **Searches**

TMD management has the right to search work areas when determined necessary.

**Confidentiality**

TMD recognizes the sensitive nature of reporting threats or acts of violence. Information disclosed in connection with a report shall, to the greatest extent possible, remain confidential. The purpose of this provision is to protect the confidentiality of the reporting employee, to encourage the reporting of any incidents, and to protect the reputation of any employee wrongfully accused. However, this provision should not be construed as limiting the ability of the department to confer with the parties or witnesses, to report incidents to law enforcement agencies, or to disclose information to fully investigate and resolve the incident.

**Retaliation Prohibited**

It is the policy of TMD that an employee not be subjected to discrimination or retaliation for reporting acts or threats of violence, when such reporting is made in good faith and with a reasonable belief.

**Verified Report**

Any employee who commits an act of violence in the workplace will be subject to disciplinary action possible criminal action, or both. Disciplinary action may include, but is not limited to, removal from the workplace, formal reprimand, demotion, reassignment or termination of employment, depending on the circumstances of the case.

**Vehicle and Traffic Safety**

The following is applicable to all TMD employees who drive a personal, state-owned or rental vehicle while conducting official state business:

1. Employees must have a current Texas driver's license;
2. All occupants are expected to use safety belts while the vehicle is in motion;
3. All speed limits must be observed and speed should be reduced to a safe driving speed during inclement weather;
4. Drivers should use good defensive driving techniques;
5. Employees should never drive while under the influence of alcohol or illegal drugs. Further, employees must not drive while taking medications(s) that cause drowsiness or while their poor health conditions could endanger their life or the lives of others;
6. Drivers are representatives of TMD and are expected to drive courteously;



7. It is the responsibility of the employee to pay traffic violations, including parking tickets; and

8. Failure to resolve traffic citations may result in disciplinary action.

Additionally, TMD employees who drive state vehicles must also comply with any established training requirements.

In the event of a traffic accident while conducting official state business:

1. Employees may provide reasonable aid and assistance to an injured person if it will not put the employee's personal safety at risk;
2. Employees should immediately report the accident to the local police or highway patrol;
3. Employees should make no comment or statement regarding possible fault other than that required by law enforcement officers; and
4. Employees should report the traffic accident within twenty-four hours to the Workers' Compensation Claims Coordinator in State Human Resources.

### **PERSONAL INFORMATION UPDATES**

Employees should regularly update the following information with state Human Resources, the Centralized Accounting and Payroll/Personnel System (CAPPS) and/or the Employees Retirement System that may impact benefits or payroll status:

- A change in home address or telephone number;
- A change in marital status or in the number of dependents;
- A change of insurance beneficiary;
- A change in the number of exemptions claimed for income tax purposes;
- Driving record or status of driver's license if the employee operates any TMD vehicles;
- A legal change of name; and
- A change in emergency contact information.

### **ALTERNATIVE DISPUTE RESOLUTION POLICY**

TMD encourages the fair and expeditious resolution of all disputes, and the department may engage in alternative dispute resolution procedures when it is appropriate for the particular dispute. If alternative dispute resolution procedures are utilized, TMD will be guided by Texas Government Code Chapter 209. In addition, TMD will, to the extent

possible, utilize the model dispute resolution procedures developed by the State Office of Administrative Hearings. The state Human Resources Director will serve as TMD's alternative dispute resolution coordinator.

### **OPEN DOOR POLICY AND COUNSELING**

TMD recognizes that employees may have suggestions for improving the workplace, as well as possible complaints about the workplace. The most satisfactory solution to a job related problem or concern is usually reached through a prompt discussion with the employee's supervisor. Employees should feel free to contact their supervisor with any suggestions and/or complaints. If an employee does not feel comfortable contacting his/her supervisor, or is not satisfied with the supervisor's response, the employee may contact another appropriate member of management or state Human Resources. Senior leaders may ask employees to demonstrate they have exhausted their chain of command before meeting with or responding to employee suggestions or complaints. State Human Resources will assist employees with identifying an employee's chain of command upon request. Not every complaint may be resolved to the employee's complete satisfaction, despite efforts to do so. However, TMD believes that open communication is essential to a successful work environment and all employees should feel free to raise issues of concern without fear of reprisal.

## **CHAPTER II**

### **EMPLOYMENT PRACTICES**

#### **EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY STATEMENT**

The Texas Military Department (TMD) is an equal opportunity employer. TMD values diversity and strives to provide an environment free of discrimination, offensive behavior, and harassment. TMD prohibits discrimination and harassment of any type and offers equal employment opportunities to employees and applicants, without regard to the following protected categories:

- Race
- Color
- National origin
- Sex
- Religion
- Age
- Genetic information
- Status as an individual with a disability or protected veteran

All employment practices (e.g. recruitment, hiring, promotions, transfers, reassignments, training, evaluation, benefits and separations), services, programs and activities will be free of discrimination. TMD does not discriminate or retaliate against any individual who exercises his or her rights granted or protected by the federal and state laws.

#### **HARASSMENT FREE WORKPLACE**

Harassment – defined as an act or communication intended to harass, intimidate, humiliate or demean an individual based on the protected categories listed above – is illegal. Harassment may create, among other things, a hostile environment for employees. In a hostile environment, employees are subjected to offensive comments or behaviors that unreasonably interfere with work performance.

Examples of prohibited harassment include, but not limited to, the following behavior:

- Verbal conduct including threats, epithets, derogatory comments or slurs;
- Visual conduct including derogatory posters, photography, cartoons, drawings or gestures;
- Physical conduct including assault, unwanted touching or blocking normal movement; and
- Retaliation for making harassment reports or threatening to report harassment.

This anti-harassment policy covers situations where co-workers are traveling for business and/or when co-workers are socializing off premises and off hours.

### **SEXUAL HARASSMENT POLICY**

Sexual harassment is a form of gender discrimination that is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. These acts constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that lowers morale, or that is so severe or pervasive that it interferes with work effectiveness. Sexual harassment is categorized into two types:

1. **“Quid pro quo”** – a Latin term meaning “this for that.” This term refers to the conditions placed on a person's career or terms of employment in return for favors of a sexual nature.
  - a. Any person in a supervisory or leadership position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of another employee or applicant is engaging in this type of sexual harassment.
  - b. Examples include but are not limited to:
    - Demanding sexual favors in exchange for a promotion or disciplining a subordinate who refuses sexual advances;
    - Making or threatening reprisals after negative responses to sexual advances;
    - Visual Conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
    - Verbal Conduct: making or using derogatory comments, epithets, slugs, and sexually explicit jokes, comments about an employee's body or dress;

- Verbal sexual advances or propositions;
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations;
- Physical conduct: touching, assault, impeding or blocking movements;  
or
- Retaliation for making harassment reports or threatening to report harassment.

Incidents of "quid pro quo" may also have a harassing effect on third parties.

**2. Hostile environment** – A hostile environment occurs when employees are subjected to offensive, unwanted and unsolicited comments, or behaviors of a sexual nature that unreasonably interfere with work performance.

a. This type of sexual harassment is not as obvious as "quid pro quo" but typically includes nonviolent, gender-biased sexual behaviors that are intentional and/or repeated.

b. Examples include unwelcome verbal comments, gestures, or physical contact of a sexual nature.

TMD recognizes the sensitive nature of complaints concerning sexual harassment. Information disclosed in connection with a complaint of sexual harassment will, to the greatest extent possible, remain confidential. TMD will confer with the parties and witnesses involved to fully investigate and resolve the complaint. Information in connection with a complaint will only be disclosed on a need-to-know basis to:

- Protect, as much as possible, the confidentiality of the employee making the complaint;
- Encourage the reporting of any incidents of sexual harassment; and
- Protect the reputation of any employee wrongfully accused of sexual harassment, and investigate and resolve the complaint.

This policy also protects employees from harassment by vendors, contractors, or volunteers. If harassment occurs on the job by someone not employed by TMD, the complaint procedures in Chapter VI should be followed.

This policy applies to males who sexually harass females or other males, and to females who sexually harass males or other females.

### **DISABILITY ACCOMMODATION**

In accordance with the Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Amendments Act of 2008 (ADAAA), reasonable accommodation will be provided to individuals with a known physical or mental disability if such accommodation would not impose an undue hardship on the department, and would enable the individual to apply for, or perform, the essential functions of the job in question. Any applicant or employee who requires an accommodation in order to perform the essential functions of the job should notify the ADA Coordinator in state Human Resources and request such accommodation. TMD will then identify possible accommodations, if any, that will help to eliminate the limitation or barrier. If the accommodation is reasonable, will not impose an undue hardship, and will not pose a direct threat to the health and/or safety of the individual or others, TMD will make the accommodation. The individual is encouraged to fully cooperate with TMD in seeking and evaluating alternatives and accommodations. TMD may require medical verification of both the disability and the need for accommodations.

#### **Reasonable Workplace Accommodation Procedures**

The reasonable accommodation process is initiated when a person with a disability indicates the need for an adjustment or a change at work or in the application process for a reason related to a medical condition.

a. When an employee or applicant requests a reasonable accommodation, the individual or his/her representative, must notify the department of the need for an adjustment or change at work for a reason related to a medical condition. The initial notification of the need for a reasonable accommodation may be made either orally or in writing. When requesting a reasonable accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." The individual making the request is required to complete an official reasonable accommodation request form during the process. (See attached, Reasonable Accommodation Request Form. In the attached appendix.) If an individual makes a reasonable accommodation request orally, the department will not delay initiating the reasonable accommodation process while waiting for the individual to complete the necessary forms. However, any required forms must be completed prior to a decision on the accommodation.

A family member, health professional, or other representative may request a reasonable accommodation on behalf of the individual with a disability. The need for a reasonable accommodation should subsequently be confirmed by the person with a disability.

b. The ADA Coordinator will work with the employee and his/her supervisor to evaluate the requested accommodation, including possible alternatives. Each

reasonable accommodation request is different and will be considered on a case-by-case basis. TMD will strive to respond expeditiously to a request for a reasonable accommodation. If there is a need to engage in the interactive process, this will proceed as quickly as possible. TMD will act promptly to provide an accommodation absent undue hardship. Any denial of a request for accommodation will be done in writing and state the reason the request was denied.

c. The ADA Coordinator or designee should periodically confer with the employee to determine the need for continuance of the workplace accommodation.

d. For assistance regarding possible accommodations, please see:

<https://www.opm.gov/policy-data-oversight/disability-employment/reasonable-accommodations/>

### **1. Medical Information**

a. If an individual requests a reasonable accommodation, and the disability or need for the accommodation is not obvious or already known, the requester must provide relevant medical information related to the disability and the requested accommodation.

b. TMD may request additional medical information if the initial medical information did not:

(1) Clearly explain the nature of the disability or the need for a reasonable accommodation; and/or

(2) Clarify how the reasonable accommodation will assist the employee in performing essential functions of the job or aide in the enjoyment of the benefits and privileges of the workplace.

c. TMD may choose to select an Occupational Health provider or a medical expert to review medical information provided by an employee or job applicant. The cost of this medical review will be paid by TMD.

d. Medical information may not be requested where:

(1) Both the disability and the need for reasonable accommodation are obvious or already known; and

(2) The individual has already provided the agency with sufficient information to document the existence of the disability and his/her functional limitations.



- e. TMD will keep all medical information confidential. Medical information will only be shared on a need to know basis as necessary to make decisions regarding the requested accommodation.

“Need to know” example:

An individual has requested assistive technology for his computer as a reasonable accommodation. The department’s computer technician is consulted regarding adding appropriate computer equipment. Although the technician may need to know the requester’s functional limitations to determine technical needs, he likely does not need to know the requesters underlying medical condition.

- f. All medical information collected during the reasonable accommodation process will be maintained in state Human Resources, in a separate file apart from the individual’s personnel file.

## **2. Temporary Assignments**

If an employee is certified by a health care provider to return to work, but in less than full duty status, TMD may provide a temporary assignment position to the employee as an accommodation. Directors and managers are responsible for identifying temporary assignment positions to facilitate return to work based on the business necessity of filling the employee's position, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments must be coordinated with the ADA or FMLA Coordinator in state Human Resources. The maximum length of time that a temporary assignment may last must be based on relevant factors including the business necessity of the employee's original position being filled. Temporary assignment positions will be identified, assigned, and managed on a case by case basis based upon the business necessity of the agency. The temporary assignment position will be documented in a "bona fide offer of employment" letter to the employee and a copy maintained in the employee’s personnel file.

## **ADA Complaint Procedures**

The Adjutant General’s Department has established the following internal grievance procedures to provide for the prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act (ADA). Title II states, in part, that “no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity.”

A qualified individual with a disability who alleges any violation of the ADA may file a written or verbal complaint with the following:

Texas Military Department  
Attn. ADA Coordinator, State Human Resources  
2200 West 35th, Austin, Texas 78703  
Mailing Address: P. O. Box 5218, Austin, Texas 78763  
(512) 782-5133 (voice) or (512) 782-5669 (fax)  
1-800-RELAY-TX (TDD)

A complaint should be filed with the ADA Coordinator within 14 calendar days after the date of the most recent alleged unlawful practice or discriminatory act, or within 14 calendar days after the date the complainant was notified or became aware of the alleged violation. A complaint should contain the following information:

- The name and address of the person filing it,
- A description of the alleged violation of the ADA,
- The date(s) of the alleged violation,
- The name(s) of person(s) involved, and
- The outcome desired.

### **Informal Resolution**

Whenever possible, and in accordance with the desires of the individual filing the complaint, the matter will be resolved in an informal setting. Informal resolution may include mediation when the parties agree. These mediation services may include consultation with the complainant and any other parties involved, either separately or jointly. Confidentiality in mediation shall be maintained. Confidentiality in investigation and resolution of the complaint will be maintained to the extent possible as determined by the ADA Coordinator.

When a complaint is resolved informally, the ADA Coordinator will prepare a memorandum, no later than 30 calendar days after the filing of the complaint, detailing the action taken or that will be taken to resolve the complaint. The memorandum will contain a signed statement by the complainant. The statement will declare that the action specified in the memorandum will satisfactorily resolve the complaint and that the individual acknowledges his or her responsibility to notify the department of any recurrence of the action giving rise to the complaint.

### **Formal Resolution**

If the complainant prefers formal resolution, or if the complainant is not satisfied with the informal resolution of the complaint, the ADA Coordinator or complainant may initiate formal procedures. In the formal resolution of a complaint, the ADA Coordinator may deem the following appropriate:

- a. Formal written statements from all parties and witnesses to the complaint;
- b. The opportunity for the ADA Coordinator and all parties to the complaint to question any party or witness to the complainant; and/or
- c. The ADA Coordinator may gather any other information that may assist in the investigation and resolution of the matter.

A written report which sets forth findings and conclusions as to the validity of the complaint and a description of the resolution, if any, shall be issued by the ADA Coordinator, and a copy forwarded to the complainant, no later than 30 calendar days after the filing of the complaint.

### **Request for Reconsideration**

The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for internal reconsideration should be made to the Deputy Executive Director within 14 calendar days after receipt of the written report, for review by the Executive Director. The Executive Director will review the complaint and respond in writing with the department's final decision within 30 calendar days of receipt of the request for reconsideration. Based on the nature or complexity of a complaint the Executive Director may review written evidence and/or gather additional evidence. The decision, determination or disposition of the Executive Director is final.

### **Pursuit of Other Remedies**

The right of a person to a prompt and equitable resolution of the complaint filed thereunder shall not be impaired by the person's pursuit of other remedies, such as the filing of an ADA complaint with the responsible federal department or agency or the obtainment of outside counsel. Use of internal agency procedures is not a prerequisite to the pursuit of other remedies, nor does it preclude the filing of an ADA complaint with the responsible federal department or agency.

### **Confidentiality of files**

All files and records obtained or created during the processing of a complaint filed under this policy are strictly confidential. These files and records will be kept in separate confidential files, and in the case of an employee, will be kept apart from his or her personnel file.

### **Retaliation Prohibited**

The department shall not discriminate or retaliate against any individual who exercises his or her rights granted or protected by the ADA or the implementing regulations, or against any individual who aids or encourages any other individual in the exercise or enjoyment of his or her rights.

### **Auxiliary Aids and Services**

To request assistance or an auxiliary aid or service at any time during the grievance process, or to request a copy of these grievance procedures in an alternate format, contact the ADA Coordinator.

#### **HIV/AIDS AND AIDS-RELATED CONDITIONS**

It is TMD policy that employees with Human Immunodeficiency Virus (HIV)/ Acquired Immunodeficiency Syndrome (AIDS) will be treated no differently than employees with other life-threatening illnesses. Employees with HIV/AIDS will be allowed to remain contributing members of the department workforce and will be provided reasonable accommodation as long as:

- They are able to perform their assigned duties;
- They do not pose a danger to their own health or safety or the health and safety of others; and
- The request for accommodation does not impose an undue hardship on the department.

Any correspondence regarding the medical condition of an employee living with HIV/AIDS or related conditions will be treated confidentially as required by law. Written consent must be obtained to share any confidential information with other staff. Those with access to confidential information must maintain strict confidentiality and privacy, separating this information from employees' personnel records. Individuals who fail to protect these employees rights commit a serious offense, which may be cause for litigation resulting in both civil and criminal penalties, and may result in dismissal.

Employees do not have the right to refuse to work with someone who has any disability, including HIV/AIDS. Employees will receive education about methods of transmission and prevention of HIV/AIDS and related conditions.

An employees who believes he/she has been discriminated against because of HIV/AIDS or a related condition should contact state Human Resources.

### **Assistance**

An employee who wants assistance concerning a disability or a life-threatening illness should contact state Human Resources.

#### **RELIGIOUS ACCOMMODATION**

TMD will make a good faith effort to reasonably accommodate the religious practices of an applicant or employee. Such accommodation may be denied if it:

- Is costly;
- Compromises workplace safety;
- Decreases workplace efficiency;
- Infringes on the rights of other employees; or
- Requires other employees to do more than their share of potentially hazardous or burdensome work.

### **WHISTLEBLOWER POLICY**

TMD employees are protected by the state's "Whistle-Blower Act" (WBA). The WBA prohibits suspension, termination, or other adverse employment action against a state employee who, in good faith, reports a violation of law to an appropriate law enforcement authority. (For purposes of the WBA, the term "law" includes a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance.)

### **INTERNAL EEO COMPLAINT PROCEDURE**

TMD will not tolerate discrimination or harassment based on race, color, national origin, ethnic characteristics, gender, age, disability, religion, genetic information or status as a protected veteran. All employees are entitled to communicate with and seek advice from state Human Resources. This provision for communication is not limited to face to face consultation. Employees can communicate with officials who are located in another geographical area by email, letter or telephone.

Any employee who believes that he or she has been harassed or discriminated against by a co-worker, supervisor, manager, vendor, contractor or volunteer of TMD or who is aware of the harassment of or discrimination against others should immediately provide a written or verbal report to a higher-level manager in the employee's chain of command or to the state Human Resources Director. TMD will endeavor to protect the privacy and confidentiality of all parties involved to the extent possible, consistent with a thorough investigation. After a report is received, a thorough and objective investigation by management will be undertaken in accordance with complaint procedures set forth in Chapter VI of this manual. Any investigation may be conducted using the Army Regulation 15-6 procedures as a general guide.

Upon completion of the investigation, a determination will be made and communicated to the employee as soon as practical. TMD expects that all employees fully cooperate with any investigation conducted by the department.

If TMD finds that this policy has been violated, remedial action be taken commensurate with the severity of the offense. Appropriate action will also be taken to deter any future harassment or discrimination. If a complaint of harassment or discrimination is substantiated, appropriate disciplinary action, up to and including termination of employment will be taken.

### **PROTECTION AGAINST RETALIATION**

Retaliation is prohibited against any person by another employee or TMD supervisor/manager for using the employee complaint procedure, reporting harassment or discrimination, or for filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by TMD or a governmental enforcement agency. Prohibited retaliation includes, but is not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit. Any report of retaliatory conduct will be investigated in a thorough and objective manner. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken.

### **RECRUITMENT PLAN**

State Human Resources assists the department in its commitment to hiring a qualified and diverse workforce. Prior to posting a job vacancy, the hiring authority may request to meet with state Human Resources to review staffing needs and define a recruitment strategy.

In addition to maintaining employment practices that are non-discriminatory, TMD is committed to taking affirmative steps to ensure that equal employment opportunities are provided and consistent with applicable law. An applicant for a posted vacancy is considered on the basis of his or her qualifications and ability to successfully perform the job. The department shall not illegally discriminate in its employment practices.

#### **Workforce Analysis**

State Human Resources calculates and tracks a quarterly summary report of TMD's state employee workforce composition. State Human Resources staff may use the workforce composition report as a tool to assess the department's objective in achieving workforce diversity.

TMD analyzes its current workforce in order to compare the numbers of individuals employed in each demographic group and job category to those in the statewide civilian workforce. The intent of this analysis is to determine the percentage of exclusion or underutilization of any demographic group by each job category within the department.

TMD annually reports equal employment opportunity information to the Texas Workforce Commission's Civil Rights Division.

**Position Announcements**

A variety of free and fee-based advertisement methods are available. The hiring authority, with approval of the program funds manager, may authorize expenditures relating to posted positions. Since the cost of advertising is paid with program funds, the hiring authority determines the most cost-effective method of recruitment within their available budget. The hiring authority shall contact state Purchasing for detailed instructions on purchasing advertisements.

Potential methods of recruitment include but are not limited to:

- Electronic advertising;
- Newspaper and magazine advertising;
- Job fairs and community outreach;
- University and college recruiting; and
- Employment search firms.

**1. Electronic Advertising**

a. TMD will post job vacancy announcements according to applicable state law and ensure that all job vacancy announcements are posted on the department's public website. The department will list external job vacancy announcements with the Texas Workforce Commission (TWC) and distribute these announcements through Work-In-Texas and USA Jobs. These employment entities disseminate information on employment opportunities to applicants statewide.

b. State Human Resources maintains and updates an electronic distribution list of organizations that may assist in meeting the department's recruitment needs. Upon request, state Human Resources will forward electronic copies of job vacancy announcements to targeted organizations.

c. Any employee may forward electronic copies of job vacancy announcements to targeted recruitment organizations and any other interested parties.

d. The hiring authority may post positions with recruiting search engines, such as Indeed or Monster.com. Before submission, state Human Resources must review advertisements for EEO compliance. The hiring authority is responsible for contacting TMD's purchasing department for detailed instructions on purchasing advertisements. State Human Resources office will maintain a copy of each advertisement in the job posting file.

## **2. Newspaper and Magazine Advertising**

For difficult to fill, specialized or high-level professional positions TMD may advertise in newspapers, magazines and journals, including Periodicals with predominantly minority readership. State Human Resources can assist with identifying appropriate publications. State Human Resources must review advertisements for EEO compliance before submission. State Human Resources will maintain a copy of each advertisement in the appropriate job posting file. The hiring authority is responsible for contacting TMD's purchasing department for detailed instructions on purchasing advertisements.

## **3. Job Fairs and Community Outreach**

- a. State Human Resources may participate in various outreach programs and attend meetings of organizations that may assist the department's recruitment of a diverse workforce.
- b. TMD's subject matter experts, state Human Resources staff, and other department representatives may attend job fairs at colleges and universities and at other local community job fair events.

## **4. University and College Recruiting**

- a. State Human Resources may participate in career days and on-campus recruiting, particularly with institutions that predominantly serve women and minorities.
- b. Students currently enrolled in a college or university may visit and tour TMD's operations at Camp Mabry to further their knowledge about the department and to spark interest in potential employment. Students may contact state Human Resources for tour information.

## **5. Outreach to Veterans with Disabilities**

TMD encourages veterans with disabilities to apply for positions with the agency. The department provides information to the Veterans Employment Center and utilizes the U.S. Department of Labor's Veterans' Employment and Training Service.

## **6. Employment Search Firm**

The hiring authority may (subject to availability of funds) retain an agency search firm to recruit difficult to fill, specialized or high-level professional positions. State Human Resources may assist with selecting an appropriate recruiting firm. The hiring authority is



responsible for contacting state Purchasing for detailed instructions on retaining a search firm.

## **HIRING PROCEDURES**

TMD takes pride in and is committed to hiring the most qualified individuals to fill positions that contribute to the department's mission, vision, and philosophy. Recruiting and hiring is based on the department's business needs. Generally, any vacancy, or newly created or supervisory position, will be posted (internally or externally). Exceptions for good cause may be approved by the Executive Director. Recruitment, selection, and promotion are based on objective job-related criteria and in compliance with state and federal law. The hiring process includes:

- Requisition to post;
- Job vacancy announcement;
- Recruitment;
- Application for employment;
- Interview;
- Background check;
- References check; and
- Candidate selection.

TMD is an equal employment opportunity (EEO) employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, genetic information, or status as an individual with a disability or protected veteran in its hiring and recruitment process.

### **Hiring Authorization**

All offers of employment will be made by state Human Resources. No individual is to be advised to begin working as a TMD state employee until he or she has been formally approved and the formal job offer has been made by a state Human Resources representative. Other employees involved in the hiring process are not authorized to make any statements providing any assurance of future employment to prospective employees. No job offer will be made until the appropriate approvals have been obtained.

### **Job Posting Process**

Posting of all vacancies will be in compliance with state law. Job posting requisition requests will be processed through state Human Resources using the NEOGOV system.

A vacancy that is filled through an intra-office promotion or transfer does not require posting. The vacancy that results from the promotion or transfer is the position that must be posted.

Notice of vacant positions will be posted on the TMD website and in state Human Resources. TMD employees are required to submit a State of Texas application form to be considered for an advertised position. For posted job vacancies, the pre-selection of an individual prior to completion of the interview and hiring process is inconsistent with an open, fair and competitive process, and is therefore not permissible.

### **FILLING VACANCIES**

The department uses several staffing and job posting methods:

#### **1. External Job Posting**

External job vacancy announcements are open to internal and external applicants. External job vacancy announcements are posted for a minimum of 10 working days on the department's website and with the TWC.

#### **2. Internal job Posting**

Internal job vacancy announcements are posted on TMD's website for a minimum of five working days and open to department employees only.

#### **3. Temporary Contract Employment**

The hiring authority may contract for a temporary employee (part-time or full-time) when temporary services are needed. A position may not be filled by a temporary or contract worker for more than six months of the last 12 months, to avoid being counted against the department's limitation on state employment levels. The hiring authority shall notify state Human Resources of the request for a temporary employee and initiate the requisition process to contract through state Purchasing.

#### **4. Designation of Open Positions for, and Direct Hiring of Veterans**

TMD may designate an open position as a veterans' position and only accept applications for that position from individuals who are entitled to a veterans' employment preference.

TMD may hire or appoint for an open position on an individual entitled to a veterans' employment preference without announcing or advertising the position, if TMD:

- Uses the Texas Workforce Commission's website, <https://wit.twc.state.tx.us>, to identify an individual who qualifies for a veterans' employment preference; and
- Determines that the individual meets the qualifications required for the position.

## 5. Internal Transfer

A vacancy may be filled through an intra-division transfer and does not require a job vacancy announcement. Both the transferring and receiving directors must approve the transfer and include justification with the personnel action request for an internal transfer rather than posting the position internally.

An internal transfer may be a lateral move—a change in duty assignment that moves the employee to another classification title in the same salary group—or a promotion.

The hiring authority interested in a current employee should provide state Human Resources with a memorandum requesting the internal employee transfer. The internal transfer request involves collaboration between the employee and the current and prospective supervisors. The memorandum must include:

- Effective date;
- Justification for the transfer;
- Documentation on how the employee meets the qualifications for the position; and
- Required chain of command signatures from both supervisors involved.

Along with the memorandum, the hiring authority must submit a job description for the new position and a Personnel Action Form.

## 6. Student Internship

State Human Resources may work with colleges and universities to coordinate student internship opportunities with the department in accordance with an internship policy or program adopted by TMD.

### Applications for Employment

Applicants applying for a *posted job vacancy* must complete and submit the state of Texas Application for Employment using the NEOGOV system. Jobs vacancies are advertised on the TMD, Work-In-Texas, and USA Jobs websites. Only on-line applications are accepted. Instructions to apply for a job vacancy are on the website and on the job vacancy announcements. A separate electronic submission must be received for each position for which applicants would like to be considered. The electronic application must be received by the closing date on the job vacancy announcement.

### Employment Eligibility

1. Former employees who left the department in good standing may be considered for reemployment.

2. An employee who has been demoted as an adverse personnel action is not immediately eligible to be considered for the same or similar position.
3. A former employee who has been terminated for cause is not immediately eligible for re-employment by TMD in the same or similar position.

State Human Resources screens employment applications for employment for the minimum qualifications stated on the job vacancy announcement. State Human Resources forwards qualified applications to the hiring authority for consideration.

### **MILITARY OCCUPATIONAL SPECIALTY CODES**

Texas law requires the State Auditor's Office to identify the military occupational safety codes that correspond to each position in the State's Position Classification Plan. Information about the State Auditor's Office's Military Crosswalk may be found at:

<http://hr.sao.state.tx.us/Compensation/JobDescriptions.aspx>

TMD includes on all employment opening forms and notices the military occupational specialty codes that correspond to the employment opening if the duties of the available position correlate with a military occupational specialty.

### **VETERANS' PREFERENCE**

An individual who qualifies for a veterans' employment preference is entitled to an employment preference over other applicants who are not more qualified for the same position. Preference is applied to identify the top candidate when two or more candidates are equally qualified for a posted job vacancy, preference is granted to an individual who qualifies for a veterans' employment preference if the veteran:

- Served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from the military with an established service connected disability;
- Was honorably discharged; and
- Is competent.

A veteran's surviving spouse who has not remarried or an orphan of a veteran qualifies for a veterans' employment preference if all of the following conditions are met:

- The veteran was killed while on active duty;
- The veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law; and
- The spouse or orphan is competent.

### **VETERANS' PREFERENCE IN APPLICANT SCREENING**

A veterans' employment preference is applied for qualified veterans during the application screening process, and a specified minimum number of individuals qualified for a veterans' employment preference will be interviewed for each announced open position. TMD has designated a veterans' liaison within state Human Resources to assist applicants.

### **ADJUTANT GENERAL APPOINTMENT**

The Adjutant General, as determined appropriate and with available funds, may appoint full-time employees of the department, traditional national guard members, state guard volunteers, or federal employees as authorized under Section 437.059 of the Texas Government Code.

### **ADJUTANT GENERAL HIRE OF SERVICE MEMBERS FOR EXTENDED STATE ACTIVE DUTY**

The Adjutant General may in accordance with established guidelines hire service members of the Texas Military Forces to fill state military positions with the department as authorized by the General Appropriations Act, as authorized under Section 437.2121 of the Texas Government Code. A service member hired under this section is considered to be on extended state active duty service and is required to retain Texas Military Forces membership as a condition of employment.

### **FORMER FOSTER CHILDREN PREFERENCE**

An individual who was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18<sup>th</sup> birthday and is under the age of 25 is entitled to a preference in employment over other applicants for the same position who are not more qualified.

### **REFERENCES FOR FORMER/CURRENT EMPLOYEES**

State Human Resource will provide reference information for current or former employees. It is TMD policy that state Human Resources only provide information regarding an individual's position, title, salary, and dates of employment. State Human Resources may provide further employment information if the current or former employee provides written consent regarding its release.

If an individual provides the name of a current employee as a personal reference on his or her behalf, that current employee should direct all questions regarding the individual's job performance, to state Human Resources.

### **CRIMINAL HISTORY CHECKS**

TMD requires criminal history checks on individuals seeking employment with the ChalleNGe or Starbase Academies. Applicants receive information regarding this process from the State Human Resource department during the hiring process. (Tex. Gov't Code §411.121)

### **LIMITED DRUG TESTING**

In accordance with specific program requirements, some TMD employees (e.g., Starbase, ChalleNGe, and security officers) may be subject to drug testing as provided by applicable policy and procedures adopted separate from this handbook.

### **E-VERIFY**

TMD employees are subject to the E-Verify program. E-Verify is an electronic program through which employers verify the identity and employment eligibility of their employees after hire. The program was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In short, employers submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States.

E-Verify is administered by the U.S. Department of Homeland Security, USCIS, Verification Division, and the Social Security Administration.

### **RETURNING SERVICE MEMBERS**

A state employee who (1) is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and (2) who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty or to a position of similar seniority, status, and pay. USERRA requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.

Under state and federal law, to be eligible for reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty. In addition, under state law, the employee must be physically and mentally qualified to perform the duties of the job. If an employee is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar or nearest possible seniority, status, and pay.

Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.

### **Applications for Reemployment**

Under state law, eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made in writing to the head of the state agency and must include evidence of discharge under honorable conditions.

### **Entitlement to Retirement or Other Benefits**

An individual reemployed is considered to have been on furlough or leave of absence during the time that the individual was in military service. As such, the employee may participate in retirement or other benefits to which a public employee is or may be entitled.

## **PERSONNEL FILES**

### **Personnel Records**

TMD will maintain personnel records in individual employee personnel files. Such personnel files will contain all personnel documentation relative to the individual employee. The official personnel files shall be maintained by state Human Resources. Documentation created by supervisors that is intended to be part of employee's official personnel file must be forwarded to state Human Resources.

### **Confidentiality**

Personnel files are confidential unless the department is required to reveal documents in such files pursuant to state or federal laws and regulations. Employee information such as name, title, sex, ethnic background, salary, and dates of employment are specifically made public under the Texas Public Information Act (TPIA).

### **Persons Who May Be Granted Access**

- Employee (or a representative that has been designated in writing);
- Adjutant General, Executive Director and the state Human Resources Director;
- Supervisors responsible for the work of the employee, when the state Human Resources Director determines access is necessary and in the best interest of the department;
- Other supervisory or management-level employees with a legitimate interest who have the permission of the Adjutant General or his designated representative. (The state Human Resources Director may require written approval for access.);
- State Human Resources employees in the course of their duties in the department;
- Internal auditors in the course of their duties in the department;
- A representative of a public agency with the statutory authority to examine personnel records; or

- Any person pursuant to court rules or a court order authorizing inspection of the file or portions of it.

### **Home Address, Phone Number, SSN, and Family or Emergency Contact Information**

Each employee has the choice under the TPIA to allow or disallow public access to their home address, telephone number, social security number, information that reveals if the employee has family members, and emergency contact information. Upon employment with the department, each employee will be asked to make this choice. If the employee fails to make a choice, the information will be considered public information with the following exceptions:

*Section 552.117 of the TPIA identifies as confidential and automatically protects the personal information of peace officers, security officers, former employees of the Texas Department of Criminal Justice, Office of the Attorney General, Texas Juvenile Justice Department, and current and former members of the Texas Military Forces.*

An employee may request at any time that access to such information be opened or closed.

### **Emergency Contact Information**

Each state employee should maintain current emergency contact information in CAPPS so that State Human Resources and supervisors in the chain of command will have access to this information in the case of an emergency.

## **OUTSIDE EMPLOYMENT**

### **Outside Employment**

Outside employment must be approved by an employee's supervisor.

The following types of outside employment are prohibited:

- Employment that conflicts with an employee's work schedule, duties and responsibilities or creates an actual conflict of interest;
- Employment that impairs or has a detrimental effect on an employee's performance with TMD; and
- Employment that requires the employee to conduct work or related activities on TMD property, during TMD work hours or using TMD facilities and/or equipment.

For purposes of this policy, self-employment is considered outside employment.



### **DUAL STATE EMPLOYMENT**

There are state and federal guidelines that might prevent dual employment with more than one state agency.

A person who is legally employed by more than one Texas state agency may not receive benefits from the state in excess of those which are provided for one full-time employee. An agreement with the additional state agency must be in place prior to confirmation of an employment offer with the department. In addition to following the policy outlined above with respect to outside employment, dual employment with the state must be in compliance with any applicable provisions of Chapter 574 of the Texas Government Code and the General Appropriations Act.

Employees working for another State agency, or those who are seeking approval to do so, must submit a request in writing to the Executive Director and the Director of state Human Resources.

Among other things, the following limitations apply:

- Separate vacation and sick leave records must be maintained for each employment;
- Leave balance transfers are prohibited. For example, if the person separates from one employment, the person's leave balances that were accrued under that employment may not be transferred to the remaining employments;
- The employee accrues state service credit for all purposes as if the employee had only one employment; and
- The total state contribution toward the employee's group insurance is limited to the amount specified in the General Appropriations Act for one full-time active employee.

Granting of approval will be based on a prior written agreement between the agencies addressing among other things how any federal Fair Labor Standards Act (FLSA) overtime compensation will be handled. If permission is granted, permission may be withdrawn at a later date if any conflict arises. The employee may be required to resign from one of the agencies.

### **EXIT SURVEY**

TMD provides all employees who are terminating their employment voluntarily, access to the State Auditor's Office online exit survey. Each exiting employee who voluntarily leaves TMD employment will be given a unique ID, a computer with Internet access (although employees may complete the survey at another location if they wish), and the web address for the survey. The site allows employees to share their responses with the Governor's office and/or their agency's executive director.

Summarized quarterly reports are available for the Executive Director and the Director of state Human Resources. These summaries are also provided to the Governor, Lieutenant Governor, Speaker of the House, and members of the Senate Committee on Finance and the House Appropriations Committee. Individual exit survey responses are not subject to disclosure under the Texas Public Information Act. (Texas Government Code, Chapter 552).

### **LACTATION POLICY**

An employee of the department has the right to express breast milk while at work. An employee may have up to 20 minutes during each half of the working day to express breast milk. TMD will provide a place free from intrusion where an employee can express milk. General duties and responsibilities under this lactation policy include:

A Place to Express Milk – TMD will upon request provide a private room for employees to express milk in reasonable proximity to the employee's work area. This room will lock and have an electrical outlet. Employees who have private offices may use their office to express milk. Agency restrooms and kitchens may be used for cleaning equipment and supplies. Employees should contact their supervisor or state Human Resources to coordinate the use of a designated private room to express milk.

Milk Expression Equipment – Employees must provide their own equipment and supplies for milk expression.

Employee Responsibilities – Employees who wish to express milk during the workday must coordinate with their supervisors as needed so they can work together to satisfy the needs of both the employee and the agency. Breastfeeding mothers are responsible for keeping the designated milk expression room clean and sanitary for the next user. Expressed milk may be stored in one of the break room refrigerators available to employees. Each employee is responsible for proper storage of her milk using available agency refrigerators or personal storage coolers.

### **NEPOTISM**

It is the policy of the TMD that no individual will hire, supervise the work of, or have control over the compensation, assignments, working conditions, or hours of work of any person related to that individual within the second degree by marriage (affinity) or within the third degree by blood (consanguinity). In addition, no person may be employed by the department who is related to the Adjutant General within the second degree of affinity or the third degree of consanguinity.

DEGREE OF RELATIONSHIP				
	1 <sup>ST</sup>	2 <sup>ND</sup>	3 <sup>RD</sup>	4 <sup>TH</sup>
Employee & Spouse	Child	Grandchild	Great- grandchild	Great, great- grandchild
	Parent	Sister/ Brother	Niece/ Nephew Aunt Uncle	Grandniece/ Grandnephew Great aunt/ Great uncle
			Great- Grandparent	Great, great- grandparent

Two persons are related to each other by consanguinity if one is a descendant of the other or if they share a common ancestor. An adopted child is treated as the natural child of the adoptive parent in this regard.

Two persons are related to each other by first degree by affinity if they are married to each other. Termination of a marriage by divorce or the death of a spouse terminates relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is treated as continuing to exist as long as a child of that marriage lives. For relationships by affinity other than husband and wife, the degree of relationship is the same as the one by consanguinity.

Married couples and other relatives may be employed if they are employed in separate divisions, or within the same division provided neither is in a supervisory position or administrative line of authority over the other. If two employees marry, the Adjutant General will have authority to:

- Transfer one or the other to a different division; or
- Modify their job assignments.

TMD will not authorize or approve the hire transfer or promotion of an employee if it would result in one family member having supervisory authority over another family member.

All employment decisions must comply with state law concerning nepotism. The hiring authority should contact state Human Resources if he or she has a question regarding the degree of relationship.

### **PERFORMANCE APPRAISALS**

TMD has developed a system of annual performance evaluations that are based on documented employee performance. The purpose of the performance evaluation is to provide a fair and objective method for supervisors to communicate performance expectations and provide job-related feedback to each employee. Performance evaluations are generally scheduled once a year or upon change in assignments. Performance evaluations are done using the approved evaluation form provided by state Human Resources.

During formal performance evaluation, supervisors and employees discuss a variety of topics, including but not limited to, attendance, quality of work, quantity of work, teamwork skills, etc. Supervisors and employees also review job tasks (revising the employee's job description if necessary), identify and address how to correct weaknesses, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals. Employees may submit written comments to be included in their personnel file with the performance evaluation. Comments, if any, should be submitted to State Human Resources within three (3) work days.

TMD reserves the right to make any personnel changes (other than unlawful events) before or after performance evaluations.

### **REDUCTION-IN-FORCE**

The Adjutant General has established this policy in the event of reduction in funding, abolition of jobs, a reorganization or loss of functions dictated by the National Guard Bureau, the Texas State Legislature or the Adjutant General that eliminate positions held by state employees. This type of separation from state employment shall not reflect negatively on the performance of an employee.

#### **Considerations**

When a reduction in force is necessary, the following actions will be accomplished. State Human Resources will be notified as soon as it becomes apparent that a reduction in force involving lay off of state employees may be required.

Based on fund limitations, contract modifications or terminations, or other factors that affect the number of state positions authorized and funded, specific job titles will be identified by management to be abolished.

Employees in the same geographical area officially assigned to specific job titles designated for elimination will compete for retention unless all such job titles are eliminated. Procedures prescribed below will be used to determine specifically who will be separated from state service.

### **Procedures**

The following procedures will be used when a reduction in force cannot be avoided.

#### ***Officials who decide which employees are separated:***

The first level supervisor over job titles designated for elimination will designate the specific employees to be separated.

The subsequent level supervisors will review and approve the actions taken by the first level supervisor.

#### ***Jobs titles with various skill levels:***

Higher level positions with the same or similar job titles, except for skill level designations, may be included in the pool with a lower level job title at the discretion of the first level supervisor. If selected for retention at a lower level position and the employee agrees, the employee will be demoted and reassigned to that position. Otherwise, if the employee has not been selected at his or her present skill level, separation will be accomplished.

Only the supervisor can determine whether or not to consider an employee for a lower skill level position.

#### ***The following criteria will be considered in order when reductions are required:***

Demonstrated job performance and efficiency will be of prime consideration. Employee Performance Evaluations, disciplinary actions, counseling statements, warnings and time and attendance reports will be used in that order to determine job performance and efficiency.

Length of service, including total state service, especially for those who are near completion of years of service required for retirement, will be next in importance for determining retention.

Temporary or employees serving on probation or trial periods will be selected for separation prior to selection of full time employees.

**Veterans' Preference**

An individual who is entitled to a veterans' employment hiring or appointment preference is also entitled to a preference in retaining employment if the Texas Military Department reduces its workforce. This applies only to workforce reductions of employees of a similar type or classification as the individual who qualifies for the veterans' preference and does not apply to veterans less qualified than employees who are not veterans.

***Official notification to affected employees:***

After all supervisors have completed their actions and have designated those employees who are to be separated due to a reduction in force, a list of names and the criteria to determine those names will be furnished to the state Human Resources Director.

The State Human Resources Director will officially notify the employees of the separation action that will occur. Notification will state clearly what action will be taken and the effective date. Supervisors will not notify employees prior to the official notification.

Every effort will be made to give a 30 calendar day notice to employees who are to be separated. When circumstance precludes notification that far in advance, a minimum of a 15 calendar day notice will be given in all cases. The notice may be given as Administrative Emergency Leave and/or when budgetary constraints allow and when approved by the Adjutant General.

**Entitlements**

Employees separated due to a reduction in force are entitled to the benefits listed below:

- Payment for applicable leave – Annual leave, holiday leave and FLSA overtime will be paid to the employee. The value of sick leave and comp time are prohibited by law to be paid to the employee;
  - Insurance – Employees will be given the opportunity to continue coverage in accordance with COBRA;
  - Unemployment compensation – Employees will be assisted, when requested, in obtaining unemployment benefits; and
  - Assistance in finding other employment – state Human Resources will coordinate with the Texas Workforce Commission to assist employees in their job search.
- State Human Resources may provide postings and other leads to future employment to the separated employees for six months following the notification of their separation from the agency.

### **Appeals**

An employee may appeal to the Adjutant General of Texas within 10 calendar days after receiving notification of a reduction in force and believes that this policy has been incorrectly applied. The appeal must be writing and include the following information:

- Name, social security number, position title and place of employment.
- Clearly state the reason the employee believes the action was inappropriate.
- Show how the agency failed to comply with the reduction in force policy and procedures.

The Adjutant General or his designee will issue a written decision on the appeals, and where applicable, direct the state Human Resources Director to take any necessary corrective action. A copy of the decision stating the corrective action to be taken will then be forwarded to the employee who filed the appeal. The decision of the Adjutant General, or his designee is final, and there is no further right of appeal.

## **TRAINING**

TMD encourages staff development and training to ensure employees have the knowledge and skills to effectively and efficiently perform their official duties.

### **In-service Training**

In-service training is job- and task-oriented training that is provided generally within the context of the performance of assigned duties at the employee's primary work site. It may include traditional on-the-job training, panel discussions, videos, and/or training in preparation for a specific job assignment, and may be delivered in a formal or informal mode.

### **External Training and Developmental Activity**

This category of training includes all workshops, seminars, institutes, and other special programs or activities which are not provided by TMD staff. This category of training may include tuition reimbursement in accordance with applicable rules and policy adopted by TMD. All training and activities must be designed to improve the technical or professional knowledge and/or job-related skills of the employee.

TMD may require an employee to attend a training or education program if the training and education is related to the employee's duties or prospective duties. TMD may spend appropriated funds to pay the salary, tuition and other fees, travel and living expenses, training expenses, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

## **Training Policy Requirements**

The State Employees Training Act authorizes a state agency to use public funds to provide training and education to its employees. Such training or education must be related to the current or prospective duties of the employee. A state agency may use money appropriated for a particular fiscal year to pay expenses for training that will occur during that fiscal year. To the extent that it is cost effective, a state agency may use money appropriated for a particular fiscal year to pay expenses for training that will occur partly or entirely during a different fiscal year.

TMD's policy and rules governing tuition reimbursement are published separate from this handbook.

## **Specific Required Training**

### **Equal Employment Opportunity (EEO) Compliance Training**

If the department receives three or more discrimination complaints with merit in a fiscal year, it must provide comprehensive equal employment opportunity training to managers and supervisors. The training may be provided by the Texas Workforce Commission (Commission) or by a person or entity approved by the Commission, including a state agency. An agency required to participate in the training must pay the cost of attending the training or reimburse the Commission or state agency providing the training through an interagency contract. If the training is not provided by the Commission, documentation verifying this training must be provided to the Commission

The documentation must include the dates that the training was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person providing the training. The Commission determines the minimum standards for the training.

### **Equal Employment Opportunity (EEO) Standards Training**

Each state agency must provide employment discrimination training, including employment discrimination involving sexual harassment, to its employees. State Human Resources provides EEO and sexual harassment training for state employees within their first 30 days of employment and employees must repeat the training every two (2) years. Employees complete online training and receive a certificate verifying their completion of the training program. A record of completion is maintained by the Texas Workforce Commission and state employees must forward a copy of the certificate of completion to state Human Resources to be maintained the employee's personnel file.

### **Coordinated Technology Training**

Each calendar quarter, a state agency must coordinate its training for the use of information resources technology with training offered or coordinated by the Department



of Information Resources. The agency must use training offered or coordinated by the Department of Information Resources if the training meets agency requirements and is cost-competitive.

### **Cybersecurity Awareness Training**

To the extent possible, state agencies must provide employees who handle sensitive information, including financial, medical, personnel, or student data, with cybersecurity awareness training that coincides with the distribution of data use agreements required by Texas Government Code, Section 2054.134, and each biennial update of those agreements.

### **Contract Manager Training**

Texas Procurement and Support Services (TPASS) within the Office of the Comptroller of Public Accounts (Comptroller) is responsible for developing and administering a training program for contract managers. The Comptroller may assess a fee for the training in an amount sufficient to recover its costs.

A contract manager is defined as a person who is employed by a state agency and has significant contract management duties for the state agency. Each state agency is responsible for ensuring that the agency's contract managers complete the training administered by the Comptroller. The Comptroller is required to certify contract managers who complete the training program.

A state agency may develop qualified contract manager training to supplement the training administered by the Comptroller. The Comptroller may incorporate into the training program it administers the training that an agency develops. In addition, the Comptroller is required to adapt its contract management training program to provide an abbreviated program for training members of the governing boards of state agencies. The training may be provided together with other required training for members of governing boards and all members of a governing board must complete at least one course of the training program. Governing boards of state agencies that do not enter into contracts are exempt from this requirement. The Comptroller may assess a fee for the training in an amount sufficient to recover its costs.

TPASS, in consultation with the Office of the Attorney General, the Department of Information Resources, and the State Auditor's Office, develops and periodically updates a Contract Management Guide for use by state agencies. This document can be viewed on the Comptroller's Web site at:

<http://www.window.state.tx.us/procurement/pub/contractguide/>.

## **CHAPTER III**

# **PERSONNEL MANAGEMENT & EMPLOYEE COMPENSATION**

### **POSITION CLASSIFICATION**

TMD follows the Position Classification Plan administered by the State Classification Team in the office of the State Auditor's Office. The Plan establishes job classification titles for full-time, part-time, hourly, and temporary employees. The job classifications within the Plan are defined as classified positions. Each job classification title is assigned to a salary group within a classification salary schedule. Employee salaries are set in accordance with the schedule. The classification salary schedules and job classification titles are contained in the most recent edition of the General Appropriations Act.

### **CAREER LADDER POLICY**

The TMD places a high value on its employees and will attempt to promote current state employees. Such promotions will take into consideration all applicable federal and state laws, the qualifications of the candidate, and the availability of positions. An employee's opportunity for promotion depends upon the employee's demonstrated ability and skill as well as the needs of the department. Advancement is not automatic or guaranteed with length of service. Progression through a classification series or a related cluster of jobs normally occurs as a result of competition and selection of a qualified employee for a vacancy in a higher level position.

State Human Resources, in conjunction with the Directors, will develop career paths for all job classifications used by the TMD to show career progressions and education necessary for those progressions. All employees will be encouraged to further their education and skills so that they are qualified for positions with higher job classifications. The department will strive to provide access to specialized training programs to assist all employees in developing and upgrading job skills.

### **PROMOTIONS**

A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualification such as greater skill or longer experience and involves a higher level of responsibility.

- An employee promoted to a position in Classification Salary Schedule A receives at least a \$30 per month increase to the base salary for a full-time employee or the minimum salary rate of the new salary group, whichever is higher;

- An employee promoted to a position in Classification Salary Schedule B will receive at least a 3.4 percent increase or the minimum salary rate of the new salary group, whichever is higher; and
- A salary amount up to and including the maximum rate of the new salary group is acceptable.

Promotions are granted solely at the discretion of department management. This policy is intended to provide general guidance concerning when an employee may be considered for a promotion; however, the fulfillment of these criteria should not be construed as entitling an employee to a promotion.

### **DEMOTIONS**

Demotion means a change in the assignment of duties of an employee from a position in one classification to a position in another classification in a lower salary group. When an employee is demoted to a position in a lower salary group in Salary Schedule A or B, he will receive a salary rate at least one increment (or 3.4%) below the rate he received before demotion. As an exception to the provisions in this paragraph, an agency is not required to reduce an employee's salary if the employee accepts a position in another classification in a lower salary group in lieu of a layoff under a reduction in force, or the employee is selected for another position in a classification in a lower salary group as a result of applying for the position. For the purpose of demotion, "lower salary group" means a salary group with a lower minimum salary rate.

### **SALARY REDUCTIONS FOR DISCIPLINARY REASONS**

If a classified employee's performance so warrants, TMD may reduce the employee's salary for disciplinary reasons to a rate in the designated salary group no lower than the minimum rate. The employee's pay may be restored to any rate in the range up to and including the prior rate as such employee's performance improves.

A demotion or salary reduction recommended as a result of serious performance or behavior problems is considered an adverse personnel action.

### **LATERAL TRANSFERS**

A lateral transfer is a change-in-duty assignment of a TMD employee that moves the employee to another job classification title in the same salary group. When such a transfer occurs, the salary can be increased, it can remain the same, or it can decrease within the salary group. If an increase is provided, it can be no more than 3.4 percent above the employee's salary prior to the transfer. If the salary decreases, it may not decrease below the minimum of the salary group. An employee's annual salary rate immediately after a transfer may not exceed the maximum rate for the salary group. An increase in salary is

not authorized for employees moving to a different position *in the same job classification* within the TMD.

### **REALLOCATIONS**

Reallocations refer to the process by which the General Appropriations Act assigns specific classified positions to a salary group that differs from the previously designated salary group. A classified employee whose position is reallocated to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reallocation, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions. Employees whose positions are reallocated to lower salary groups will receive the salaries they would have received had their positions not been reallocated. However, the employees' salaries must not exceed the maximum rates for the lower salary groups.

### **RECLASSIFICATIONS**

A reclassification is defined as a change in the classification of a position to another classification title as a result of a classification audit, classification review or reorganization by the TMD. The purpose of a reclassification is to properly classify a position based on the actual duties currently performed by an employee. It does not refer to a change in an employee's duty assignment. A position may be reclassified at any time to correct a discrepancy.

Reclassifications can result in a higher or lower salary group. They can be effective at any time but are generally effective on the first of the month.

An employee's position may be reclassified when the employee's essential job functions have been significantly altered and are a better fit in a different class series. An individual employee in coordination with supervisory chain of command may request TMD HR to initiate a classification review. The initiation of such a classification review rests solely at the discretion of the TMD's management. TMD HR coordinates the classification review through the appropriate chain of supervision.

#### **Reclassification to a Higher Salary Group**

- A classified employee whose position is reclassified to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reclassification, whichever is higher, unless TMD management chooses to give additional salary to maintain desirable salary relationships.

- Salaries of reclassified employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.

#### **Reclassification to a Lower Salary Group**

- A classified employee whose position is reclassified to a lower salary group will receive the salary he or she would have received had their position not been reclassified, unless the employee's salary exceeds the maximum rate for the lower salary group.
- If the employee's salary prior to the reclassification is above the maximum salary of the lower salary group, the employee will receive the maximum salary of the new lower salary group.

Approval of reclassifications is within the sole discretion of TMD's management. This policy is intended to provide general guidance concerning when an employee may be considered for a reclassification; however, the fulfillment of these criteria should not be construed as entitling an employee to a reclassification.

#### **OVERTIME/COMPENSATORY TIME**

In accordance with the provisions of the Fair Labor Standards Act (FLSA or the Act) and the Texas Government Code, TMD employees may receive compensation for time worked in addition to the employee's regular work schedule. Subject to prior supervisory approval, the compensation for the extra time worked will be credited as compensatory ("Comp") time or FLSA Overtime, depending on the circumstances and the employee's FLSA status. Employees will be compensated in the form of time off from work [except in limited circumstances, defined below, where payment is required by law or otherwise deemed appropriate]. Supervisors shall ensure that any request to work additional time is justified to conduct necessary agency business. If for any reason an employee's State Comp time or FLSA Overtime exceeds the maximum balance as set forth in this policy, the supervisor must establish a plan to reduce the earning of Comp time and overtime in the future. Supervisors may require employees to work overtime as deemed necessary for agency needs.

#### **FLSA Exempt or Non-Exempt Designations**

State Human Resources Office will determine employee designation as Exempt or Non-Exempt based on the FLSA requirements and a review of an employee's actual job duties. The employee's classified or functional job title does not necessarily determine the employee's exemption from the FLSA requirements.

- **Exempt** employees are those that are *exempt* from the FLSA overtime provisions because they are employed in bona fide executive, professional, administrative or computer- related positions as defined in the Act.
- **Non-Exempt** employees are those that are subject to FLSA overtime provisions.

### **Work Week Defined**

TMD's standard work week is defined as beginning at 12:00 AM Sunday continuing until 11:59 PM the following Saturday.

### **Earning Compensatory Time**

Employees must obtain supervisor's prior approval before extra time is worked and State Comp time or Holiday Comp time is earned. Comp time must be earned in increments of 15 minutes. Comp time is accrued during a work week when the combined number of hours of holiday or other paid leave and actual hours worked exceeds 40 hours. Employees and supervisors are responsible for ensuring a State Comp time balance does not exceed 160 hours for Exempt employees, 80 hours for Executive-Exempt employees or 80 hours for Non-Exempt employees.

### **Meal Periods**

Employees will not earn Comp time or FLSA Overtime during their meal period. Meal periods of 30 minutes or longer are not considered work time. Employees must be completely relieved from duty for the purpose of eating meals. Employees are not relieved from duty if they are *required* to perform any duties, whether active or inactive, while eating.

### **Assigned Place of Employment**

No employee, whether or not subject to FLSA, may accrue Comp time or FLSA Overtime for work conducted at any location other than the employee's regular or temporarily assigned place of employment or duty point. In no event shall an employee's personal residence (including residences provided by the agency) be deemed to be the employee's regular place of business or duty point, unless expressly designated in writing by the Adjutant General or designee, the Executive Director.

### **Travel Time and "On-Call" Status**

If an employee is on travel status, Comp time or FLSA Overtime will be earned for hours on duty, to include travel to and from the job site. If an employee is required to be "on-call", the time during which an employee is "on-call" and required to carry a cell phone or leave word where the employee may be reached (but does not involve performing an assignment) is not regarded as time physically worked and Comp time or FLSA Overtime will not be earned.

### **Holiday Compensatory Time**

Employees who must work on a designated national or state holiday will be allowed compensatory time off for hours worked on a holiday, not to exceed eight hours per holiday. Holiday Comp time is earned at straight time. Holiday Comp time must be used during the 12-month period following the date of the holiday or it will be lost. Employees are required to give reasonable advance notice when taking Holiday Comp time; however, employees do not have to specify the reason for the request. A balance of Holiday Comp may be transferable to another state agency if employees transfer to that agency as a direct result of the Legislature's transfer of authority or duties from one agency or another.

### **Authorization to Use State Compensatory Time**

TMD will accommodate to the extent practicable an employee's request to use accrued State Comp time. State Comp time off must be used within 12 months of the end of the work week in which it was earned or it will be lost.

Supervisors are encouraged to reasonably accommodate employee requests to use accrued State Comp time before it expires. Employees may request permission to use their accrued State Comp time within 90 days of the date on which it will expire. If the request cannot be approved, alternative dates should be provided within the time period before the State Comp time will expire.

State Comp time is not transferable to another state agency and employees will not be paid for any unused compensatory time. With the exception of retirement, employees separating employment will not be allowed to remain on the payroll to exhaust any part of their unused State Comp time or Holiday Comp time. Once an employee gives notice of separating employment, no State Comp time or Holiday Comp time may be used after the employee's last physical day at work. Retiring employees may request to use a maximum of 100 hours of accrued Comp time in conjunction with retirement.

### **State Comp Time Combined With Military Orders**

Employees activated to military service as a member of the reserve component of the armed forces will be provided a statement containing their accrued Comp time balance and the TMD will accommodate the employee's request to use the balance of the employee's accrued State Comp time before the Comp time expires.

### **State Comp Time for Emergency Services Personnel**

Employees not subject to the overtime provisions of the federal FLSA and who qualify as emergency services personnel may be allowed to take State Comp time during the 18-month period following the end of the work week in which the Comp time was accrued. In those situations, in which an emergency personnel employee provides services during an emergency, the employee may be paid for all or part of the Comp time accrued based on

funds availability at the employee's regular hourly rate for all or part of the Comp hours accrued during the disaster in the preceding 18 months. The employee's Comp time balance will be reduced by one hour for each hour for which the employee is paid. Employees will annotate in the reason column of the monthly time sheet that the Comp time was earned during an emergency situation.

### **Exempt Employees**

Exempt employees may earn State Comp time at the rate of one hour for each hour recorded in excess of 40 hours in a work week. The recorded hours may be any combination of actual hours worked, paid leave or holidays taken.

Exempt employees will be compensated in the form of time off from work and will not be paid for any unused State Comp time. State Comp time off must be used within 12 months of the end of the work week in which it was earned or it will be lost.

Exempt employees are responsible for ensuring that a balance does not exceed 160 hours of State Comp time. Exception: Executive-Exempt employees are responsible for maintaining a balance not to exceed 80 hours of State Comp time.

With the exception of Executive-Exempt employees, supervisors must grant prior approval for employees to work hours in excess of their standard scheduled work week. Employees must obtain supervisor's prior approval before Comp time is taken.

### **Non-Exempt Employees**

Non-Exempt employees will receive compensation for hours *actually worked* in excess of 40 hours in a work week. Paid leave taken and/or holidays taken during the work week are not counted as hours worked in determining FLSA overtime hours. Supervisors must grant prior approval for Non-Exempt employees to work hours in excess of their standard workweek.

Employees classified as non-exempt are prohibited from working "off the clock" (i.e., without reporting the overtime worked). Non-exempt employees must report all of the time worked. Non-exempt employees should not work any time that is not authorized by their supervisor or manager. Employees with questions about when or how many hours they are expected to work should discuss this with their supervisor or contact state Human Resources.

Non-Exempt employees can earn FLSA Overtime, State Comp time, Holiday Comp time, or a combination of the three types. The following explains each situation:

#### **1. FLSA Overtime**

Non-Exempt employees will be compensated for any hours worked in excess of 40 hours in a work week in one of the following ways:



- a) By being allowed to or required to take FLSA compensatory time off at the rate of 1.5 hours for each hour worked in excess of 40 hours during the work week; or
- b) When granting FLSA compensatory time off is not practical, and with the approval of the Adjutant General or his designee, the employee will receive 1.5 times his/her regular rate of pay for each hour worked in excess of 40 during the work week; or
- c) The supervisor may require an employee to take off an afternoon, a day, or even an entire week to avoid the accumulation of additional overtime.

Non-Exempt employees may accumulate up to 100 overtime hours which converted to straight time is 150 hours available Overtime leave. An employee engaged in fire protection or emergency response may accumulate an overtime credit up to 480 hours of FLSA Overtime. FLSA Overtime worked less than the total accumulation limit of 100 hours (150 converted hours) will not be paid unless approved by the Adjutant General or his/her designee.

Accumulated FLSA Overtime leave may be rendered as pay (or “cashed out”) when:

- An employee’s converted overtime hours exceed the 150-hour limit; the employee will be paid for all hours over 75;
- The employee’s position changes from Non-Exempt to Exempt –e.g. the employee receives a promotion or the position is re-classified;
- The employee transfers from one directorate to another and the funding source changes; or
- The employee separates from the agency.

A Non-Exempt employee who is separating from state employment, to include retirement, (i.e. not transferring to another state agency) may request with approval from their supervisor, to remain on the payroll to exhaust their FLSA Overtime hours. An employee cannot remain on the payroll to exhaust any unused FLSA Overtime hours past his/her retirement date.

## **2. State Compensatory Time**

When a Non-Exempt employee has not actually worked more than 40 hours in one work week but the combined total of hours worked, paid leave or paid holidays exceeds 40 hours, the employee is allowed State Comp time off at the rate of one hour for each hour recorded in excess of 40 during one work week. State Comp time must be used within 12 months following the end of the work week in which it was earned and will not be carried forward past the end of the 12 month period. Employees and their supervisors are responsible for ensuring that the State Comp time balance does not exceed 80 hours for Non-Exempt employees.

### 3. Combination of FLSA Overtime and State Compensatory Time

In situations where a Non-Exempt employee has actually worked more than 40 hours in a work week and has paid leave or paid holidays in that week, the employee will receive FLSA Overtime hours for any hours worked over 40 plus State Comp time or Holiday Comp for any paid leave or paid holiday time used during that week.

#### Part-Time Employees

Part-time, Non-Exempt employees will receive State Comp time for any hours worked over their normal weekly schedule, but less than 40 hours for the week (i.e. a part-time, non-exempt employee who is regularly scheduled to work 20 hours per week, but works 30 hours will receive 10 hours of State Comp time for that week). They will earn FLSA Overtime for any hours actually worked over 40 during a week.

Part-time, Exempt employees will receive State Comp time for any hours worked over their normal weekly schedule, including any hours worked over 40.

### MERIT SALARY INCREASES AND ONE-TIME MERIT PAYMENT

A merit salary increase may be granted to an eligible employee for meritorious job performance. Meritorious job performance is job performance and productivity that are consistently above the normal expected levels. There are two types of merit rewards:

- **Merit Salary Increase:** A merit raise that increases the eligible employee's base salary.
- **One-time Merit Payment:** A single, lump-sum payment that does not change the eligible employee's base salary.

General guidelines for merit actions are included as an attached appendix.

### EQUAL PAY ADJUSTMENTS

An equity pay adjustment is a change in the salary rate of an employee whose position is classified under the position classification plan to any rate within the employee's salary group range that is necessary to maintain desirable salary relationships between and among employees of the agency, and employees who hold similar positions in comparable labor markets. In determining desirable salary relationships, the agency will consider the education, skills, relevant work experience, length of service, turnover rates, and job performance of employees.

Equity pay adjustments are NOT merit salary increases, promotions or reclassifications. Their sole purpose is to establish or maintain salary equity. The award of equity pay adjustments is subject to the availability of funds. The approval of equity pay adjustments is within the sole discretion of the Adjutant General or his designee.

An equity pay adjustment may be awarded to an employee only if:

- The employee has worked in the current position for six continuous months while maintaining a satisfactory level of job performance as determined by supervisor;
- The adjustment does not take effect during the same fiscal year as another equity adjustment made to the employee's salary; and
- A review and analysis is completed that establishes the need for an equity adjustment.

An equity pay adjustment must be initiated by a supervisor or manager. Each request for an equity pay adjustment must be supported by a written justification that includes a review and analysis of the salary relationships between the subject employee and agency employees who receive salaries under the same job classification and perform the same type and level of work, or between the subject employee and similar employees in comparable labor markets. The review and analysis must justify the need for an equity adjustment.

### **Promotion, Reclassification, or Equity Adjustment Procedures**

Requests for promotions, reclassifications or equity adjustments are documented, substantiated and submitted through the chain of supervision to state Human Resources.

The review process for reclassifications may require a desk audit to ensure that the position is appropriately classified in accordance with the State Classification Plan.

Supervisors should contact state Human Resources to initiate a promotion, reclassification or equity adjustment request. The process includes:

- A memorandum documenting the basis for the proposed action, including the most employee's current job description;
- A proposed new job description; and
- A personnel action form.

### **MANDATORY PAYROLL DEDUCTIONS**

A state agency may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

To the extent that the laws, regulations, and rules of Texas or the United States do not specify the priority of deductions, the Comptroller by rule may determine the priority for compensation paid by a state governmental body.

The State *must* withhold money from salaries and wages paid to state officers and employees in accordance with applicable federal law, including federal law relating to

withholding for purposes of the federal income tax. The State must make any required employer contributions in accordance with applicable federal law.

The Comptroller must make payments in accordance with applicable state and federal law. The Federal Insurance Contributions Act (FICA) is also known as the U.S. Social Security tax. It is composed of Old Age, Survivors, and Disability Insurance benefits (OASDI) and Medicare. All employees are subject to both types of FICA taxes.

### **OPTIONAL PAYROLL DEDUCTIONS**

#### **Charitable Contribution Deductions**

A state employee may authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as authorized by state law. In most cases, a state employee may authorize a deduction only during a state employee charitable campaign. However, a state employee who begins working for the State when a campaign is not being conducted may authorize a deduction according to the Comptroller's requirements. A state agency other than an institution of higher education is not required to permit an employee to authorize a deduction until the first full payroll period after the agency converts to a system in which uniform statewide payroll procedures are followed. In such situations, a state employee who works for a state agency that does not allow deduction authorizations may authorize a deduction that is effective with the first full payroll period after the agency is converted to a system in which uniform statewide payroll procedures are followed. A state employee who authorized a deduction while working for a state agency may continue the deduction after transferring to another state agency if the Comptroller's rules for continuing the deduction are followed. An authorization must direct the Comptroller to distribute the deducted funds to a participating federation or fund or a local charitable organization selected by the State Policy Committee as prescribed by rule. Deductions must be in the form prescribed by the Comptroller. The Comptroller by rule may establish a reasonable minimum deduction for each pay period.

#### **Credit Unions Deductions**

An employee of a state agency may provide written authorization to make a deduction each pay period from the employee's salary to an account with a credit union.

#### **Deductions for Membership Fees for Eligible State Employee Organizations**

An employee of a state agency may provide written authorization to make a deduction each pay period from the employee's salary or wage payment for payment of a membership fee of an eligible state employee organization. For information about eligible state employee organizations, state agencies should contact the Comptroller of Public Accounts.

### **Deductions for Supplemental Optional Benefits Program**

An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program. A deduction may be made each pay period from the employee's salary or wage payment without authorization in writing from the employee for participation in a 401(k) plan as provided by state law.

The Employees Retirement System of Texas (ERS) designates and administers the supplemental optional benefits programs that promote the interests of the State and state agency employees. The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, prepaid legal services, or a qualified transportation benefit as determined by ERS.

### **Withholding of Administrative Fee for Supplemental Deductions**

The state may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction. The administrative fee may not exceed the lower of the actual administrative cost of making the deduction or the highest fee charged by the state or institution, as appropriate, for making another similar deduction.

### **Deductions for Prepaid Higher Education Tuition Program**

The following prepaid tuition or college savings contracts can be paid through a payroll deduction: Texas Guaranteed Tuition Plan (formerly known as the Texas Tomorrow Fund), Texas Tuition Promise Fund, Texas College Savings Plan, and LoneStar 529 Plan. An employee may have one or more separate contracts in one or more of the available plans.

## **BENEFIT REPLACEMENT PAY**

Prior to January 1, 1996, the State paid a portion of the federal taxes for eligible state employees and eligible state-paid judges under the Federal Insurance Contributions Act (FICA). This payment was commonly known as state-paid Social Security. Beginning with wages paid January 1, 1996, this state-paid Social Security ceased. The Texas Legislature chose to offset the effects of the repeal of the state's payment of the taxes imposed on state employees and state paid judges under FICA by paying a new entitlement called benefit replacement pay (BRP).

Eligibility for BRP will be determined at the time of employment by TMD.

## DIFFERENTIAL PAY

### 1. Military Pay Differential

TMD grants sufficient emergency leave to provide a pay differential if an employee's military pay is less than the employee's state gross pay. The combination of military pay and emergency leave may not exceed the employee's actual state gross pay. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay.

TMD will inform activated state employees of the agency's intent to use emergency leave to supplement their military pay to raise it to a rate comparable to the state pay received prior to activation. Only state employees called to active duty in support of a national emergency or Homeland Security mission (under United States Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay.

Service members involved in routine military training or who are attending military schools are not entitled to this differential pay. If emergency leave is granted to state employees activated for military duty, those employees will accrue sick leave and vacation leave each month they receive pay from the department. The sick and vacation leave will be accrued but not posted until the employee returns to full employment with TMD.

#### a. Determining Eligibility:

To determine eligibility, TMD will request a copy of the employee's Military Leave and Earnings Statement each month that emergency leave is going to be granted, to determine the total entitlement of military pay received by the service member. The service member's pay may change during the period of active duty because of a promotion or change in entitlements. Any increase in pay may reduce or cease the need for state military differential pay.

### 2. Differential for Shift Work or Carrying Weapons

TMD may supplement an employee's regular pay for working duty hours other than Monday through Friday, normal business hours, or supplement an employee's pay for maintaining the necessary license to legally carry a weapon on duty as a requirement for the position. Differential pay is not an entitlement and is subject to the availability of funds.

#### a. Shift Work

##### Criteria for Eligibility

An employee regularly scheduled to work evenings, night shifts or weekends is eligible to receive a shift differential pay supplement. Employees who work evening and night shifts during a weekend shift are eligible to receive both a weekend shift differential and an evening or night shift differential pay.

If TMD is having trouble filling vacant positions and determines it is in the department's best interest to increase the supplement for security or mission purposes, a detailed justification request will be considered by the Executive Director.

Shift differential pay is subject to:

- annual certification of availability of funds by the program area funds manager for every eligible employee; and
- approval by the Executive Director.

### **Evening and Night Shifts**

An employee is eligible for shift differential pay if a minimum of four (4) hours worked during the shift fall between 7:00 p.m. and 7:00 a.m.

### **Weekend Shift**

An employee is eligible for weekend shift differential pay if the regularly-scheduled hours fall between 11:00 p.m. Friday and 11:00 p.m. Sunday.

#### **b. Carrying Weapons**

The TMD may pay weapons differential pay to an employee who holds an armed commissioned security officer license issued by Texas Department of Public Safety (Reference: Occupations Code Chapter 1702 Subchapter G. Sec. 1702.161), and carries a weapon in the performance of their assigned duties. Security officers employed by TMD must follow procedures governing the possession and use of approved firearms and training established in accordance with the master Cooperative Agreement, Appendix 3, ARNG Security Cooperative Agreement and Master Cooperative Agreement, Appendix 24, ANG Security Cooperative Agreement.

#### **c. Payment of Differential Pay for Shift Work or Carrying Weapons**

Employees may be eligible for differential pay; however before payment is made, the appropriate funds manager must certify the availability of funds. In the event that funds are not available, are no longer available, or the employee is no longer eligible, differential payments will be discontinued.

A Personnel Action form must be prepared and submitted by the program's manager to state Human Resources by the 15<sup>th</sup> day of the month prior to the effective date for Shift Differential as well as Weapon Pay. The effective date must be the first day of a month. Continuation of funding for differential pay will require recertification of availability each fiscal year.

Employee eligibility status recertification will be conducted at the beginning of each state fiscal year, or more often if requested.

<b>RATE OF PAY FOR DIFFERENTIAL PAY</b>	
Night Shift	\$200 Per Month
Evening Shift	\$200 Per Month
Weekend Shift – 1 Day Regular Schedule	\$ 50 Per Month
Weekend Shift – 2 Day Regular Schedule	\$100 Per Month
Carrying Weapons	\$100 Per Month

### **JURY SERVICE AND WITNESS FEES**

A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, including a deduction for any fee or compensation the employee receives for the jury service.

A state officer or employee who appears as a witness in an official capacity in a judicial proceeding or legislative hearing may not accept or receive a witness fee for the appearance. A state officer or employee who appears as a witness in a capacity that is other than as a state officer or employee in a judicial proceeding or legislative hearing and to testify from personal knowledge concerning matters related to the proceeding or hearing is entitled to receive any customary witness fees for the appearance. A state officer or employee who appears as an expert witness in a judicial proceeding or legislative hearing may accept compensation for the appearance only if the person is not also compensated by the State for his or her time in making the appearance. Additionally, the state officer or employee may accept reimbursement for travel expenses only if the expenses are not reimbursed by the State. For these purposes, paid leave is not considered time compensated by the State. A state officer or employee may receive reimbursement for travel and a per diem or reimbursement for expenses connected to an appearance in an official capacity as a witness in a judicial proceeding or legislative hearing only from the State or the judicial body, but not from both the State and the judicial body.

### **LONGEVITY PAY**

Longevity pay is provided to all eligible full-time employees who are not on leave without pay the first workday of the month and who have at least two (2) years of lifetime (or state) service credit. Part-time employees do not receive longevity pay on a proportional basis.



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Those **ineligible** for longevity pay include members of the Legislature; individuals elected to public office; an independent contractor or an employee of an independent contractor; temporary state employees; officers or employees of public junior colleges; academic employees of institutions of higher education; and return to work employees who retired from state employment on or after June 1, 2005, and who receive an annuity based wholly or partly on service as a state officer or state employee.

If an employee changes from a full-time state employee after the first workday of a month to another status (for example, a part-time employee), but otherwise qualifies for longevity pay, the employee's compensation for the month includes full longevity pay.

**Longevity Pay Chart**

The monthly amount an eligible employee receives for longevity pay is based on the employee's years of state service as set forth below:

<u>Years of Service</u>	<u>Monthly Longevity Pay</u>
Less than 2 years	\$ 0
At least 2 but less than 4 years	\$ 20
At least 4 but less than 6 years	\$ 40
At least 6 but less than 8 years	\$ 60
At least 8 but less than 10 years	\$ 80
At least 10 but less than 12 years	\$100
At least 12 but less than 14 years	\$120
At least 14 but less than 16 years	\$140
At least 16 but less than 18 years	\$160
At least 18 but less than 20 years	\$180
At least 20 but less than 22 years	\$200
At least 22 but less than 24 years	\$220
At least 24 but less than 26 years	\$240
At least 26 but less than 28 years	\$260
At least 28 but less than 30 years	\$280

<u>Years of Service</u>	<u>Monthly Longevity Pay</u>
At least 30 but less than 32 years	\$300
At least 32 but less than 34 years	\$320
At least 34 but less than 36 years	\$340
At least 36 but less than 38 years	\$360
At least 38 but less than 40 years	\$380
At least 40 but less than 42 years	\$400
At least 42 or greater	\$420

### RECRUITMENT BONUS

To enhance the recruitment of competent personnel for certain classified positions and subject to the availability of funds, TMD may provide to a state employee, at the time of hire additional compensation in the form of a one-time payment not to exceed \$5,000. Any offer of a recruitment bonus requires **advance** approval by the Adjutant General. If the employee discontinues employment with the department for any reason less than three months after the date of receiving the recruitment payment, the employee must refund to the full amount of the recruitment payment.

If the employee discontinues employment with TMD for any reason 3 months or more but less than 12 months after the date of receiving the recruitment payment, the employee must refund an amount computed by:

*Subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment; dividing the number of months above by 12 months; and multiplying the fraction computed by the amount of the recruitment payment.*

Before the department provides or enters into a contract to provide additional compensation to an employee under Texas Government Code, Section 659.262, the Adjutant General or Executive Director as designee must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary. Additional compensation paid to an employee in accordance with Texas Government Code, Section 659.262, is specifically exempted from any limitation on salary or salary increases.

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

### **RETENTION BONUSES**

To enhance the retention of employees who are employed in certain classified positions that are identified by the Adjutant General or the Executive Director as "essential for the state agency's operations," and subject to the availability of funds, TMD may enter into a deferred compensation contract with an employee to provide the employee a one-time payment not to exceed \$5,000.

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

The Adjutant General or Executive Director as designee must determine whether additional compensation is necessary on a case-by-case basis and must consider the following:

- The criticality of the employee position in the operation of the department. Evidence of high turnover rates among employees filling the position or an extended period during which the position has been vacant.
- Evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants. Other relevant factors.

Before the department provides or enters into a contract to provide additional compensation to an employee under Texas Government Code, Section 659.262, the Executive Director must certify in writing to the Comptroller of Public Accounts the reasons why the additional compensation is necessary. Additional compensation paid to an employee in accordance with Texas Government Code, Section 659.262, is specifically exempted from any limitation on salary or salary increases.

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

### **DIRECT DEPOSIT**

The State of Texas provides employees the option of being paid through direct deposit. TMD encourages all employees to use this payment option. State Human Resources provides all new employees information and forms on how to receive pay through direct deposit. With TMD's implementation of the HR/Payroll environments of the Centralized Accounting Payroll/Personnel System (CAPPS), employees may only make direct deposits into one account. Employees should contact State Human Resources or State Payroll for questions related to direct deposit.

## **PERSONNEL AND SALARY ACTION PROCESSING**

### **Personnel Action Form**

A Personnel Action Form (PAF) must be completed for any personnel action (i.e., new hire, promotion, reclassification, merit increase, demotion, transfer, separation, status change, leave without pay, etc.). The PAF must contain all required signatures before the personnel action is official. Promotions, salary increases, or one-time merit awards will not be processed until all required approvals have been received.

### **Employee Notification**

Agency practice and policy dictate that employees not be notified about any salary action until official notification of approval is received from state Human Resources.

### **PAF Deadline**

Generally, a PAF related to a merit increase (or one-time award), promotion, demotion, reclassification, change in FTE status, or transfer must be received in state Human Resources by the 15<sup>th</sup> of the month (or as otherwise established and notified by Payroll), or the first working day thereafter, to establish an effective date of the current month. Otherwise, the change will become effective the first day of the following month. A request for a current month effective date for a salary-related action filed after the 15<sup>th</sup> of the month, must include a detailed statement explaining why immediate action is required and the reason the action cannot wait until the first of the following month.

## **WORKERS' COMPENSATION**

Workers' Compensation is a form of insurance that provides income benefits, among other things, for workers who are injured on the job, or acquire an occupational disease on the job. The decision on coverage is made by the State Office of Risk Management. Employees should refer to Chapter IV of this handbook for more information regarding Workers' Compensation benefits.

## CHAPTER IV

### LEAVE AND OTHER EMPLOYEE BENEFITS

#### 1. LEAVE BENEFITS

##### ACCOUNTING FOR LEAVE

All employees will account for their time worked, and will also obtain approval and account for the type of leave taken during each month. Managers have discretion in deciding how their employees should request the use of leave (i.e. completing the employee leave request form, email etc.). Employees who are absent without proper approval may be subject to disciplinary measures. Employees who are absent without authority and who do not notify their supervisors within three workdays will be considered to have abandoned their position and could be terminated.

TMD is required to and maintains a record of time and attendance for each of its employees. Such records include: the accrual and use of vacation and sick leave, the reason an employee takes leave if the law requires the employee to inform the department of the reason, and whether any leave taken is accounted for as sick leave, vacation leave, other paid leave, leave without pay, or other absence. TMD uses the Centralized Accounting and Payroll/Personnel System (CAPPS) maintained by the Texas Comptroller of Public Accounts (CPA) for this purpose.

The key roles and responsibilities related to state employee timekeeping in CAPPS include:

- **Employee** – Responsible for making sure that the hours worked or leave taken reflected on his or her timesheet are correct.

It is important that employee leave taken and compensatory or overtime hours worked be entered in CAPPS in a timely manner to ensure accurate leave balances. Incorrect or untimely entries may impact or delay employee pay or benefits. Generally, employees should enter on their CAPPS timesheet extra time worked and leave taken as actions occur, but not later than weekly.

Employees must continue to forward to the Leave Accountant in State Human Resources, a copy of supporting documentation for any leave that requires it (e.g., military leave, jury duty, volunteer firefighter training, etc.).

Employees are expected to submit their Time Certification in CAPPS between the 1<sup>st</sup> and 10<sup>th</sup> of each month (this is equivalent to signing the timesheet and is separate from the weekly submission of extra time worked and leave).

- **Manager** – First or second level supervisor (civilian or military) is responsible for monitoring, reviewing, approving, correcting and/or denying time or worked or leave entered by an employee on a timesheet.

Managers are expected to approve or deny submitted leave or extra time worked by close of business Friday of each week.

Managers are also expected to enter time and leave on behalf of employees under their supervision in the employees' absence. Managers may delegate this responsibility to a designated Time Administrator within their department. This delegation of authority and responsibility must be in writing and submitted to State Human Resources, upon request.

- **Time Administrator** - With written authorization from a manager(s) within their department, the Time Administrator may act on behalf of the manager(s) to perform duties related to the entry in CAPPs of employee extra time worked and leave.
- **HR Super User** – State Human Resources staff provides oversight for other roles and can monitor, review, approve and correct time on behalf of an employee or manager.

All employees are assigned to a regular work schedule in CAPPs – the number of schedule hours is listed below each day of the week on the CAPPs timesheet. This does not account for reporting times, just the total number of work hours each day. Generally, scheduled hours on the CAPPs timesheet are automatically processed/paid and employees should only enter exceptions to their work schedule. Managers should coordinate with State Human Resources when changes to the regular work schedule are needed; schedule changes will be effective the first day of the FLSA workweek (Sunday).

Except for the monthly time certification, an entry on the CAPPs timesheet is only required when an employee:

- Takes leave (including leave without pay);
- Works hours outside of his or her regular schedule; and/or
- Works on a holiday OR is scheduled to work more than eight hours on the date of a holiday.

Different CAPPs timesheet entry requirements apply to employees in the Ellington Fire Department because of their 24-hour duty shifts; refer to Chapter VII, State Employees Assigned to Fire Protection Activities for more information.

Time Reporting Codes (TRCs) are used on the CAPPS timesheet to identify the type of time or leave being entered. For a list and description of TRCs, training resources and detailed procedures, go to: [tmd.texas.gov/CAPPS](http://tmd.texas.gov/CAPPS).

**VACATION LEAVE**

State employees are entitled to paid vacation leave (also referred to as annual leave) each year. Employees begin to accrue vacation leave on their first day of employment and on the first calendar day of each succeeding month of state employment. However, vacation leave may not be taken until the employee has been employed with the state for six continuous months.

A full or partial calendar month of leave without pay does not constitute a break in state employment nor does it require the employee to start over in the calculation of the employee’s continuous months of employment. However, if an employee is on leave without pay for a full calendar month, that month is not counted in computing:

- Total state service credit for purpose of vacation leave accruals;
- Total state service for purposes of longevity pay; or
- Continuous state service for purposes related to merit increases or vacation leave.

In addition, if the employee is on any type of paid leave that extends into the following month, the employee’s accrual of leave will not be posted until the employee returns to duty, which means the employee may not take vacation leave accrued for that month until the employee returns to work. An employee forfeits this accrual if he or she does not return to duty.

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

Employees may carry unused vacation leave forward from one year to the next. The amount of allowable carryover hours depends on the length of state service and the number of hours worked. State employees who are employed by multiple state agencies or institutions of higher education may not accrue vacation leave at a rate that exceeds that of a full-time employee.

<b>Schedule of Vacation Leave Accruals for Full-Time Employees</b>			
<b>Length of Service</b>	<b>Hours Accrued per Month</b>	<b>Days Accrued per Year</b>	<b>Allowable Carryover (Hours)</b>

Less than 2 years	8	12.0	180
At least 2 but less than 5 years	9	13.5	244
At least 5 but less than 10 years	10	15.0	268
At least 10 but less than 15 years	11	16.5	292
At least 15 but less than 20 years	13	19.5	340
At least 20 but less than 25 years	15	22.5	388
At least 25 but less than 30 years	17	25.5	436
At least 30 but less than 35 years	19	28.5	484
At least 35 years or more	21	31.5	532

All vacation leave hours in excess of the maximum allowable carryover remaining at the end of a state fiscal year must be credited to the employee's sick leave balance. Accruals of vacation leave end on an employee's last day of duty, which is an employee's last physical day on the job. After departure from TMD, if the employee is not re-employed within 30 days by the state in a position where the employee accrues vacation (annual) leave, the employee will receive a lump sum payment for any remaining balance of accrued vacation time.

### SICK LEAVE

Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions.

A full-time employee accrues sick leave at a rate of eight (8) hours per month (or proportionately for part-time employees). An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. Duty day means an employee's last physical day on the job. An employee who is on leave the first day of the month may not use that month's accrual until he or she returns to duty. Accrued sick leave may be used immediately upon employment when an employee is prevented from performing his or her job due to sickness, injury, pregnancy or confinement. It may also be used to care for an employee's immediate family member who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household; and minor children regardless of whether they live in the same household. Sick leave may be used to care for immediate family members who do not reside in the same household only for a documented medical condition. In this instance only, "immediate family" is interpreted as spouse, parent, or child. In addition, sick leave may be used for the adoption of a child under the age of three.

An employee who will be absent from work must notify his or her supervisor as soon as possible. An absence of more than three days requires the employee to provide a doctor's



certification or a written statement of the facts surrounding the absence and the nature of the illness. The doctor's certification or written statement should be filed with State Human Resources. The need to provide such documentation for absences of three days or fewer is done at the discretion of the Adjutant General or Executive Director as designee. While out on vacation leave, an employee may instead use sick leave, provided the employee would otherwise be eligible for sick leave.

### **SICK LEAVE POOL**

The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave. An employee becomes eligible to withdraw time from the sick leave pool if the employee has exhausted his or her sick leave because of a catastrophic illness or injury of the employee or of a member of the employee's immediate family.

The Employees Retirement System has defined the following terms:

***Catastrophic injury or illness*** is a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose sick leave compensation from the state for the employee.

***Licensed practitioner*** means practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.

***Immediate family*** is defined as those individuals related by kinship, adoption, marriage, or foster children who are so certified by the Department of Human Services [now the Health and Human Services Commission] who are living in the same household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.

#### **Administering the Sick Leave Pool**

TMD's sick leave pool is administered by the State Human Resources Director or his or her designee, the Leave Specialist. Contributions to the sick leave pool must be in increments of one (1) or more days with the exception of retiring employees who may designate the number of hours to be donated. An employee may draw from the sick leave pool only with the approval of the pool administrator or designee.

Supporting documentation from a medical practitioner must be submitted to the pool administrator. The documentation must contain sufficient information to allow the pool administrator to evaluate the employee's eligibility. An employee may not receive sick leave in excess of one-third of the total time in the pool or 90 days, whichever is less. The form to request leave from the sick leave pool is included in the attached appendix.

### **DONATION OF SICK LEAVE TO ANOTHER EMPLOYEE**

Employees of state agencies may donate any amount of the employee's accrued sick leave to another employee who: Is employed in the same agency as the donor employee, and has exhausted his or her sick leave, including any time he or she may be eligible to withdraw from a sick leave pool.

Employees may not provide or receive remuneration or a gift in exchange for a sick leave donation. An employee who receives donated sick leave may not: use the donated sick leave except as provided by Texas Government Code, Section 661.202 (d) and (e), or receive service credit in the Employees Retirement System of Texas for any donated sick leave that is unused on the last day of the employee's employment.

#### **GENERAL REQUIREMENTS**

An employee who donates sick leave:

- Must donate on a voluntary basis;
- Can donate sick leave hours in any increment with no minimum or maximum;
- Can donate sick leave to more than one recipient; and
- Will lose ownership of and access to sick leave hours they choose to donate (donated sick leave hours are considered used and will not be restored).

Donors of sick leave will not be disclosed by TMD to recipients to prevent employees from providing or receiving any compensation, gift, or other benefit in exchange for a sick leave donations.

An employee who receives donated sick leave:

- Must have exhausted all of their sick leave balances, including any awarded sick leave pool;
- Must have a combined total balance of other accrued leave (annual, compensatory time or overtime) of less than 40 hours;
- Must use donated sick leave only for purposes that accrued sick leave may be used: *when the employee is prevented from performing his or her job due to sickness, injury, pregnancy or confinement; or to care for the employee's immediate family member who is ill;*
- Cannot use the donated sick leave for service credit towards Employees Retirement System of Texas retirement;
- Cannot transfer the donated sick leave to another state agency;
- May use the donated sick leave hours intermittently, must exhaust accrued sick leave before using donated sick leave; and
- Will not be notified by TMD of the identity of the donor.

Upon termination of employment, any unused donated sick leave balance will be recorded as lost. If the employee terminates employment and is subsequently rehired by TMD, the sick leave hours that were lost cannot be reinstated. Additionally, any donated sick leave balances will not be paid to the estate of a deceased employee.

The process and procedures for donations of sick leave to a specific employee who has requested a donation; and the appropriate forms to use for requesting and donating sick leave; are in the attached appendix.

### **MILITARY LEAVE (SERVICE)**

In accordance with state and federal law, TMD provides paid leave to eligible employees who are called to active military duty or authorized training.

#### **1. Leave Entitlement**

Employees are entitled to paid leave as described in this policy for the following types of military service:

- a. Authorized training or duty for members of the state military forces and members of any of the reserve components of the United States Armed Forces;
- b. Call to National Guard active duty by the Governor;
- c. National emergency active duty for members of a reserve branch of the United States Armed Forces.

#### **2. Authorized Training or Duty**

A TMD state employee who is called to active duty or authorized training as a member of the state military forces or any of the reserve components of the United States Armed Forces or a state or federally authorized urban search and rescue team, is entitled to a paid leave of absence from his or her respective duties without loss of time, efficiency rating or performance review rating, vacation time, or salary for not more than fifteen working days in a federal fiscal year (October 1 through September 30.) If the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry the net balance forward to the next federal fiscal year, not to exceed 45 workdays.

The fifteen days of military leave need not be consecutive. Members of the state military forces or members of reserve components of the United States Armed Forces who are ordered to duty on non-consecutive days are entitled to a total of fifteen days. These fifteen days of military leave are working days and not calendar days.

- a. All military leave, other than a call to active duty in the National Guard by the Governor, is subject to a maximum of fifteen days of leave per federal fiscal year (see paragraph 4, below for exception.)

### **3. Military Leave During National Emergency**

A leave of absence will be provided to an employee called to active duty during a national emergency to serve in a reserve branch of the United States Armed Forces under Title 10 of the United States Code. During such leaves of absence, the employee will accrue state service credit, but will not accrue vacation or sick leave. However, the employee retains any accrued sick or vacation leave and will be credited with those leave balances upon return to state employment.

- a. Employees are entitled to a maximum of fifteen working days of paid military leave if they have not already exhausted their annual entitlement.

An employee who remains on active duty after exhausting his or her fifteen days of annual entitlement may choose (but is not required) to use all or some portion of accrued vacation or other paid leave to the extent available, or be placed on a leave without pay status, or a combination of the two, for the remainder of the active duty period.

### **4. Call to Declared Emergency Leave by the Governor**

An emergency leave of absence with full pay will be provided to a state employee who is called by the Governor of Texas to active duty as a member of the Texas Military Forces because of a declared state emergency, without loss of paid military or annual leave. The employee is entitled to this leave with full pay. This time is not limited and does not count against the fifteen days maximum military leave not is the employee required to use annual leave.

### **5. Military Leave to Assist Civilian Authorities**

A TMD employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military leave or vacation leave.

Only when the Governor calls a member of the Texas Military Forces to active duty for a declared emergency is the period of leave unlimited, paid, and without loss to annual or military leave

### **6. Adjustment in work schedule for members of the Texas Military Forces**

The work schedule of any employee who is a member of the Texas Military Forces or the United States Armed Forces Reserve must be adjusted so that two of the employee's days off each month coincide with two days of military duty to be performed by the employee, in order to facilitate participation in military duties by state employees. Supervisors may adjust the work schedule of any employee who is a member of another state's National Guard.

7. A member of the state military forces who is ordered to active state duty by the governor or by another proper authority under Texas law is entitled to the same benefits and protections provided: to persons performing service in the uniformed services in accordance with Title 38, United States Code, Sections 4301–4313 and Sections 4316–4319, as that law existed on April 1, 2003; and to persons in the military service of the United States in accordance with Title 50, United States Code, Appendix Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003.

### **General Procedures**

State employees must notify supervisors and State Human Resources as soon as possible when they are called for military duty. Specific procedures for requesting a military leave of absence and leave without pay are provided in the attached appendix.

Accurate records of military leave taken will be retained in the employee’s departmental file and in the personnel or leave accounting file in State Human Resources. If employees are on military leave for one calendar month or more, accurate records of state service credit will also be maintained.

### **CHILD’S EDUCATIONAL ACTIVITY LEAVE**

A state employee may use up to eight (8) hours of sick leave each fiscal year to attend educational activities of the employee’s children who are in pre-kindergarten through 12th grade. The employee must give his or her supervisor reasonable notice of his or her intention to use this leave. Educational activities are school-sponsored activities, including parent-teacher conferences, tutoring, volunteer programs, field trips, classroom programs, school committee meetings, academic competitions, and athletic, music, or theater programs.

### **FOSTER PARENT LEAVE**

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (Department) is entitled to a paid leave of absence to attend meetings held by the Department regarding the foster child. In addition, the employee may use this entitlement to attend admission, review, and dismissal (ARD) meetings held by a school district regarding the foster child.

### **FAMILY AND MEDICAL LEAVE**

To determine FMLA eligibility entitlement, TMD uses a 12-month period measured backward from the date an employee requests family and medical leave.

Eligibility for family and medical leave is limited to employees who have worked for the state for at least 12 months. The 12 months of employment do not need to be consecutive or continuous. However, TMD does not have to include employment prior to a break in service of seven or more years unless the break is occasioned by the employee’s

fulfillment of his or her covered service obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act).

In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start date of family and medical leave. For purposes of family and medical leave, the state is considered a single employer. Agencies and institutions of higher education should credit time worked for other state agencies and institutions of higher education when considering family and medical leave eligibility.

### **Entitlement**

The FMLA entitles all eligible employees to a total of 12 weeks (or 480 hours) of job-protected leave during a 12- month period for one or more of the following reasons:

- The birth and subsequent care of a newborn child;
- The placement of a child into the home of an employee or with the employee for adoption or foster care;
- The need to care for a spouse, child, or parent with a serious health condition. (A child includes a biological, adopted, or foster child, stepchild, a legal ward, or child of a person standing in loco parentis. A parent is defined as a biological, adoptive, step, or foster parent, or individual who stood in loco parentis to an employee when the employee was a child.); and
- The need to take medical leave when the employee is unable to work because of a serious health condition.

In cases in which eligible spouses are both employed by TMD, they are limited to a combined total of 12 weeks of family and medical leave for the following reasons:

- Birth of a child and care of a child after birth;
- Placement of a child with the employee for adoption or foster care and to care for a newly placed child; and
- To care for a parent who has a serious health condition (or 26 workweeks if the leave is granted to care for a covered service member with a serious injury or illness).

Employees are entitled to 12 weeks (or 480 hours) of job protected leave during the 12 month period measured forward from the date of the first FMLA usage.

### **Request and Notice**

An employee requesting FMLA leave must inform his/her supervisor (a leave request form may be used) and request must be submitted to State Human Resources for processing.

If the need for family and medical leave is foreseeable, an employee seeking to use family and medical leave is required to provide a 30-day advance notice of the need for the leave. If notice cannot be provided 30 days in advance, the employee should notify his or

her employer as soon as practicable. If the employee is unable to submit a written request, the employee's supervisor must notify State Human Resources of the employee's absence, and the employee's authorized representative may coordinate with State Human Resources to provide required documentation.

Unless unusual circumstances exist, employees must comply with the usual and customary notice and procedural requirements for requesting leave.

Within five (5) working days, after receipt of notice absent extenuating circumstances, TMD will notify the employee verbally or in writing of the employee's eligibility to take family and medical leave. The written notice of eligibility will include details about the specific expectations for and obligations of the employee and explain any consequences of a failure to meet the obligations.

### **Certification**

An employee requesting leave due to his/her own serious health condition or that of a covered family member, must provide the department a health care provider's certification.

TMD may when deemed necessary request, at the department's expense, second and third medical opinions.

Additionally, TMD may require periodic recertification of the employee's family member's serious health condition.

TMD may use a health care provider, a human resources professional, a leave administrator, or a management official—but not the employee's direct supervisor—to authenticate or clarify a medical certification of a serious health condition or provide sufficient information to allow a decision to be made regarding the employee's eligibility for FMLA.

If the family and medical leave is to care for a covered service member, also known as military caregiver leave, TMD may require an employee to obtain a certification completed by an authorized health care provider of the covered service member. Included in the documentation should be a statement or description of appropriate medical facts, sufficient to support the need for leave, regarding the covered service member's health condition for which FMLA leave is requested.

TMD requires employees returning from leave for their own serious health condition to submit a "fitness for duty" certification that they are able to resume work. If reasonable safety concerns exist, TMD may under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.

**Use of Paid Leave**

The FMLA entitlement of job-protected leave is generally unpaid. However, vacation leave, sick leave, state compensatory time, administrative leave, and banked holiday time are considered state benefits and can be counted toward an employee's 12-week FMLA entitlement (or 26 weeks of military caregiver leave entitlement addressed below). TMD will require an employee to use all vacation and sick leave, compensatory time and FLSA overtime prior to being placed on a leave without pay (LWOP) status.

Sick leave may be used in conjunction with family and medical leave when a child under the age of three (3) is adopted, regardless of whether the child is ill at the time of adoption. However, a state employee on family and medical leave who is the father of a child may use his sick leave only if the child is ill due to childbirth or to care for his spouse while she is recovering from labor and delivery.

Family and medical leave may be used intermittently or on a reduced leave schedule when medically necessary due to the serious health condition of a covered family member, the employee, or a service member; or because of a qualifying exigency. If the request to use intermittent leave is for a planned medical treatment, the employee must make a reasonable effort to schedule the treatment in a manner that does not unduly disrupt the department's business operations; including following the usual and customary procedural requirements for requesting leave.

Employees requesting intermittent leave after the birth of a child or placement of a child for adoption or foster care must get employer approval for the intermittent leave.

**Job Restoration and Maintenance of Health Benefits**

An employee who takes family and medical leave must be returned to the same job or a job with equivalent status and pay, even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. Furthermore, the time that an employee was on such leave cannot be counted against the employee under a "no fault" attendance policy.

During the time an employee is on family and medical leave, TMD must continue the employee's health benefits. An employee who takes family and medical leave is still responsible for paying his or her portion of health insurance premiums.

An employee, excluding an employee returning from unpaid military leave during a national emergency, does not earn state service credit, vacation leave, or sick leave for any full calendar months of leave without pay while on family and medical leave.

For information on the FMLA go to: <http://www.dol.gov/dol/topic/benefitsleave/fmla.htm>.



### **PARENTAL LEAVE**

Employees who do not qualify for FMLA leave are entitled to parental leave not to exceed twelve (12) weeks for the birth of a child or the adoption or foster care placement of a child under the age of three (3). To be eligible for parental leave, an employee does not meet eligibility requirements for FMLA leave because;

- The employee has worked for the state of Texas for less than 12 months; or
- The employee has worked fewer than 1,250 hours during the 12-month period preceding the leave.

The employee must first use all available and applicable paid vacation and sick pool leave while taking parental leave prior to going on leave without pay. Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employer of a child younger than three (3) years of age.

### **MILITARY FAMILY LEAVE ENTITLEMENTS**

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter, parent, or next of kin. In addition, the FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness. Those two types of FMLA leave are known as the "military family leave entitlements." A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty), or is in support of a contingency operation for covered members of a reserve component. Examples of a qualifying exigency may include: short-term deployment; military events and related activities; childcare duties and school activities; care of the military member's parent who is incapable of self-care; financial and legal arrangements; counseling; rest and recuperation; and post deployment activities.

If the leave is for the birth and care of a child, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of the child.

### **VETERAN MEDICAL/MENTAL HEALTHCARE LEAVE**

Veterans who are eligible for health benefits by the Veterans Health Administration (VHA) of the U.S. Department of Veteran Affairs may be granted leave (not to exceed 15 days per fiscal year) to obtain medical or mental health care administered by the VHA in accordance with the Texas Government Code § 661.924.

## LEAVE WITHOUT PAY

### Policy

An employee absent from work who has exhausted all available or eligible paid leave will be placed in leave without pay (LWOP) status for the period of the absence. If this absence from work was not requested and/or approved in advance, it will be considered unapproved LWOP.

Additionally, in accordance with Texas Government Code § 661.909, TMD may grant an employee a leave of absence without pay, subject to the following:

- Such leave will be limited to a maximum of twelve months;
- Except for disciplinary suspensions, active military duty, and workers compensation situations, all accumulated paid leave entitlements must be exhausted before granting such leave (sick leave must be exhausted only in those cases where the employee is eligible to take sick leave);
- Subject to fiscal constraints, approval of leave without pay constitutes a guarantee of employment at the conclusion of the period of time specified; and
- The Adjutant General, or his designee, may grant exceptions to these limitations for such reasons as allowing the employee to work for another state agency under an interagency agreements or educational purposes.

For example, LWOP may be granted for absences due to: active military duty; a workers' compensation injury; or when good cause is shown and the failure to grant LWOP would or could create a severe hardship for the employee. (Example: Damage to an employee's principal place of dwelling caused by accident or disaster.) The agency must require appropriate documentation, i.e. military orders, physician statements, etc., is required to grant LWOP.

LWOP status also may be imposed upon an employee as a disciplinary suspension when such adverse personnel action is appropriate.

LWOP is considered exceptional leave and is not intended to be requested or taken simply for employee convenience. Accordingly, TMD may take disciplinary action to correct, or otherwise address, an employee's failure to properly manage his/her leave to avoid unapproved LWOP. An employee on unapproved leave without pay is not guaranteed continued employment at the conclusion of the period of absence.

**Procedures for requesting leave without pay**

All requests for LWOP must be in advance of leave, to the extent possible, in accordance with applicable leave request procedures. Except for disciplinary suspension, unpaid leave for active military duty, and unpaid leave for workers' compensation, all accrued leave, including sick leave if applicable, must be exhausted prior to taking LWOP.

Employees requesting leave without pay due to military duty must provide official documentation (copy of orders) for military service and/or military school in accordance with procedures set forth above under military leave. The applicable supervisor(s) will notify State Human Resources (and State Human Resources will notify State Payroll) of the requested LWOP immediately.

Employees requesting leave without pay due to a workers' compensation injury or illness must provide a physician's statement to the Workers' Compensation Coordinator in State Human Resources.

**Unapproved leave without pay**

An employee who enters into a leave without pay status that has not been approved in advance may be subjected to disciplinary action up to and including termination. The applicable supervisor(s) will notify State Human Resources (and State Human Resources will notify state Payroll) immediately when made aware that an employee is absent from work without available or eligible paid leave.

**First Occurrence**

If less than a full day, the supervisor may, at his or her discretion, (1) allow the employee to work extra hours to make up the time during that work week, or (2) charge leave without pay. The supervisor will counsel the employee regarding the leave without pay absence and ways to prevent future occurrences. This counseling will be documented in writing and maintained by the supervisor.

**Second Occurrence (within any twelve-month period):**

Supervisor will counsel the employee and warn that a subsequent occurrence may result in a recommendation for termination of employment. This warning will be documented in writing, forwarded to State Human Resources to be filed in the employee's personnel file including a reference to the first counseling on the matter.

**Third Occurrence (within any twelve month period)**

The supervisor may take other disciplinary action up to and including a request, that the employee be terminated from employment. A request for termination of employment must be sent to State Human Resources with proper and adequate documentation.

**Effects of LWOP on Pay and Benefits****State Service Credit**

Except for an employee who returns to employment from military leave without pay, an employee who is on LWOP for a full calendar month will not accrue state service credit for that month. An employee who is on LWOP for less than a full calendar month will accrue state service credit for the month if the employee otherwise qualifies to accrue credit.

**Monthly Payroll:**

Leave without pay will result in the following actions:

- A decrease in salary for the month leave without pay was taken;
- Possible placement on an off-cycle payroll. Paychecks from off-cycle payroll should be distributed no later than the 15th of the following month;
- Possible loss of longevity pay if leave without pay is taken on the first working day of the month; and
- Possible loss of state's contribution for health insurance if the LWOP is for an entire calendar month or longer, and is not covered by FMLA. Employees in a LWOP status will be notified by the State Benefits Coordinator of their responsibility to pay their insurance premiums and, if applicable, TexFlex Health Care account premiums, and the method of payment.

**Holiday Pay**

An employee who takes leave without pay a full day before and/or a full day after a holiday that falls mid-month will not be entitled to that holiday. An employee who takes leave without pay a full day after a holiday that falls on the first working day of the month will not be entitled to that holiday. An employee who takes leave without pay a full day before a holiday that falls on the last working day of the month will not be entitled to that holiday.

**Leave Accruals**

An employee on leave without pay the first working day of the month will not receive his/her annual and sick leave accruals until he/she physically returns to duty. An employee who takes a full month of leave without pay will not receive his/her annual or sick leave accruals for that month, unless they are on LWOP due to military leave. Annual and sick leave accruals earned while on military LWOP cannot be used until the employee physically returns to duty.

**Leave Without Pay and FMLA**

Employees in a LWOP status during a full calendar month are responsible for paying their insurance premiums. Employees are not entitled to the state contribution while they are on any full month of LWOP status, except FMLA. Employees on FMLA leave without pay are entitled to the state contribution (health insurance for employee only). Employees who pay their premiums may continue all Texas Employee Group Benefits Program (GBP) coverage in effect immediately prior to going on a LWOP status, except disability coverage.

**PAYMENT OF ACCRUED LEAVE OF DECEASED EMPLOYEES**

In the event of an employee's death, the employee's estate is entitled to payment by the State for (1) all accumulated vacation leave and (2) one-half of accumulated sick leave or 336 hours, whichever is less. The payment is calculated by multiplying the employee's hourly rate at the time of death by the total number of leave hours applicable. The calculation does not include longevity or hazardous duty pay. The estates of appointed officers or employees of the state who normally work at least 900 hours per year and who have accrued six months of continuous state employment are eligible for this benefit. However, a deceased employee's estate is not entitled to payment for earned but unused state compensatory time.

**EMERGENCY LEAVE****1. Bereavement**

The State Human Resources Director or his or her designee will grant upon request emergency leave of up to three days, to an employee for a death in the employee's family. An employee's family is defined as the employee's spouse, as well as the employees and spouse's parents, children, brothers, sisters, grandparents, and grandchildren (this provision includes step relatives). The form to request emergency leave for bereavement is included in the attached appendix.

## **2. Good Cause**

The Adjutant General, or his/her designee may grant emergency leave for other reasons determined to be for good cause.

Except when the agency is closed due to weather conditions or in observance of a holiday, an employee must request emergency leave for good cause. After the supervisor's signature, the request should be sent to the State Human Resources Director for review. The request must be approved by either the Adjutant General, as agency head, or the Executive Director, as designee and administrative head.

This leave should only be requested in extraordinary circumstances (for example, when the employee has been subpoenaed to testify as a witness in his/her private capacity; or when the employee is facing a catastrophic illness or event and is not eligible for or has exhausted other leave). A supervisor may request emergency leave for good cause on behalf of an individual or group of employees for situations involving, for example, safety hazards or other emergency situations. (See also, *Office Closure Information* in Chapter I of this handbook).

Emergency leave for good cause may not be granted unless the agency head believes in good faith that the employee being granted the emergency leave intends to return to the employee's position with the agency on expiration of the period of emergency leave. A copy of the completed Emergency Leave form must be forwarded to the Leave Accountant in State Human Resources. The form to request emergency leave for a reason of good cause is included in the attached appendix.

### **INVESTIGATION LEAVE**

Investigation leave without a deduction in salary may be granted by the Adjutant General or the Executive Director to an employee who is: (1) the subject of an investigation being conducted by the Texas Military Department or (2) a victim of, or witness to, an investigation being conducted by the Texas Military Department.

### **ADMINISTRATIVE LEAVE FOR OUTSTANDING PERFORMANCE**

Administrative leave with pay may be granted by the Adjutant General or the Executive Director as a reward for outstanding performance. This performance must be documented with specific and detailed justification for the requested award. The total amount of administrative leave granted may not exceed 32 hours per employee during a fiscal year. The form for requesting administrative leave for outstanding performance is included in the attached appendix. The completed form should be submitted to State Human Resources.

### **WORKERS' COMPENSATION LEAVE**

An employee may elect to use accrued sick leave prior to receiving Workers' Compensation income benefits. If the employee makes the election to use accrued sick leave, the employee must exhaust all accrued sick leave before the employee is entitled to use income benefits. After exhausting sick leave, the employee may also use accrued vacation leave. If making this choice, the employee may elect to use all or any number of weeks of vacation leave. The amount of vacation leave the employee elects to use must be exhausted before the employee is entitled to receive income benefits. TMD may not require employees to exhaust state or Fair Labor Standards Act (FLSA) compensatory time balances before receiving income benefits. In addition, the TMD may not prohibit employees from using state or FLSA compensatory time while they are receiving income benefits.

State employees who are exhausting their leave as a result of a workers' compensation claim are prohibited from using sick and vacation leave hours that accrue after the first day of the month in which the employee became incapacitated unless they physically return to work.

### **AMATEUR RADIO OPERATOR LEAVE**

An employee with an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time. The amateur radio operator leave should be authorized by the employee's supervisor **and with the approval of the governor**. The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.

### **ASSISTANCE DOG TRAINING LEAVE**

An employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted paid leave of absence not to exceed 10 working days in a fiscal year to attend a training program to acquaint the employee with an assistance dog that the employee will use.

### **BLOOD DONATION LEAVE**

TMD will allow employees sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off to donate blood unless the employee obtains approval from his or her supervisor before taking time off. Upon returning to work, the employee must provide his or her supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that he

or she donated blood during the time off, the department must deduct the time off from the employee's salary or accrued leave, whichever the employee chooses. An employee may receive time off to donate blood not more than four times in a fiscal year.

### **BONE MARROW AND ORGAN DONATION LEAVE**

A state employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence may not exceed:

- Five (5) working days in a fiscal year to serve as a bone marrow donor; or
- 30 working days in a fiscal year to serve as an organ donor.

### **CERTIFIED AMERICAN RED CROSS ACTIVITIES**

State employees who are certified disaster service volunteers of the American Red Cross or who are in training to become a volunteer may be granted paid leave — without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time — not to exceed 10 days each fiscal year to participate in specialized disaster relief services for the American Red Cross. The employee must have the approval of his or her supervisor **and the governor and a request from the American Red Cross**. The number of certified disaster service volunteers who are eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of eligible employees.

### **COMPLIANCE WITH A SUBPOENA**

TMD will not discharge, discipline, or penalize an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. A state employee must coordinate this leave with his/her supervisor.

### **COURT APPOINTED SPECIAL ADVOCATE (CASA) VOLUNTEERS**

A state employee may be provided paid leave not to exceed five (5) hours each month to participate in mandatory training or to perform volunteer services for Court Appointed Special Advocates. This leave is provided to an employee without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time. A state employee must coordinate use of this leave with his/her supervisor.

### **JURY SERVICE**

An employee is entitled to serve on a jury without a deduction in salary, including a deduction for any fee or compensation the employee receives for jury service. Legislative leave is not considered a break in service and is treated as any other paid leave. A state



employee should include a copy of the jury attendance form or other documentation of service provided by the court with his or her timesheet as proof of jury service.

#### **TIME OFF TO VOTE**

TMD will allow employees sufficient time to vote without deducting employee pay or accrued leave time. An employee must coordinate any leave for voting with his or her supervisor.

#### **VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL SERVICES TRAINING LEAVE**

Volunteer firefighters and emergency medical services volunteers will be granted up to five (5) working days of paid leave each fiscal year for attending training services conducted by a state agency or institution of higher education. For purposes of this leave, a working day is eight (8) hours per day. Leave with full pay will also be granted to volunteer firefighters or an emergency medical services volunteer for the purpose of responding to emergency fire or medical situations. This leave will not be charged against an employee's vacation or sick leave accruals. A state employee must document this leave by completing a leave request form indicating the specific reason for the leave and submit the documentation with the employee's timesheet.

#### **WELLNESS LEAVE**

Employees may be awarded eight (8) hours of wellness leave in accordance with TMD's Health and Wellness Program outlined under "Other Benefits" below.

### **OTHER BENEFITS**

#### **EMPLOYEE ASSISTANCE PROGRAM**

An employee assistance program (EAP) is a discretionary program that TMD offers employees to help with personal concerns that may adversely affect job performance. State employees may contact State Human Resources for information regarding EAP benefits.

#### **INSURANCE COVERAGE**

The State of Texas provides a comprehensive benefits program for employees in state agencies and institutions of higher education through a group benefits program administered by the Employees Retirement System (ERS). In addition to health insurance, state employees have access to other types of insurance such as dental, vision, term life, optional term life, dependent term life, short- and long-term disability, accidental death and dismemberment, and flexible health and dependent care reimbursement accounts.

State employees who have other health insurance comparable to what the state provides may drop the Texas Employees Group Benefits Program health insurance and elect to

waive a Health Insurance Opt-Out Credit. Full-time employees may receive up to a \$60 credit per month and part-time employees may receive up to a \$30 credit to be used towards the cost of certain optional coverage. The TRICARE Military Health System supplemental plan is available to an employee or annuitant who waives coverage under the Texas Employees Group Benefits Program and is eligible for benefits under the TRICARE Military Health System.

Detailed information on state insurance programs is available through State Human Resources and the ERS Web site at <http://www.ers.state.tx.us>.

The Texas Employees Group Benefits Program is intended to provide health, life, and accident insurance benefits to all employees of the state and their eligible dependents. Except for the conditions discussed in the Texas Insurance Code, no employee of a state agency or institution of may be denied coverage unless the employee waives this coverage. There are currently two types of medical plans in the Texas Employees Group Benefits Program: Health Select and health maintenance organizations (HMOs). When employees enroll in either of these plans, they automatically receive a basic group term life insurance policy paid for by the state. Effective September 1, 2016, an optional consumer-directed health plan is available for certain individuals eligible to participate in the group benefits program provided under the Texas Employees Group Benefits Act and their qualified dependents.

A new employee's eligibility for health insurance benefits begins not later than the 60th day after the date of employment or the employee is qualified for and begins to hold appointed office. Effective September 1, 2015, certain state employees who are reemployed after military service will be eligible for health insurance on the first date of reemployment on which the employee performs services for a state agency.

Employees who elect to enroll eligible dependents into the Group Benefits Program must: (1) adhere to dependent audit requirements, including submitting required documentation within a specified timeframe (failure to do so will result in dependent's being dropped from health coverage); and (2) certify their status, as well as the status of any dependents enrolled in the state health plan, as tobacco users or non-users.

Upon termination of employment with the state, insurance coverage will remain in effect until the first day of the month following termination. An employee has 60 days from the termination to convert to an individual policy under the COBRA program. COBRA is a federal law (Public Law 99-272) that requires the State of Texas to offer employees and dependents covered under the Uniform Group Insurance Program (UGIP) the opportunity to temporarily extend their health and dental coverage at the group rates. Continuation coverage is available only when qualifying events cause coverage under the UGIP to end. Coverage under COBRA is limited to the health and dental coverage in effect at the time of the qualifying event. It is the employee's responsibility to notify the ERS of his or her intent to continue the medical insurance program.

### **WORKERS' COMPENSATION Benefits Other Than Leave**

Workers' Compensation is a state-administered insurance program through the State Office of Risk Management (SORM) that pays state employee medical bills and may replace a portion of lost wages if an employee is injured at work or has a work-related illness that arises out of the course and scope of employment. SORM investigates each Workers' Compensation claim and determines whether it is compensable. If a Workers' Compensation claim is denied, the employee is responsible for medical costs.

Employees are covered under Workers' Compensation unless they choose to opt out by notifying the Texas Military Department in writing within the first five (5) days of employment. By electing to opt out, the employee retains his or her common law right of action. If an employee elects to retain his or her common law right of action, he or she cannot obtain Workers' Compensation income or medical benefits from SORM if they are injured, but must pursue compensation and medical cost reimbursement through the courts.

#### **Types of Benefits**

Workers' Compensation may provide four (4) types of benefits: medical benefits, income benefits, death benefits, and burial benefits.

- Medical benefits: pay for the medical care necessary to treat a work-related injury or illness;
- Income benefits: replace a portion of any wages lost because of a work-related injury or illness;
- Death benefits: replace a portion of lost family income for eligible family members of workers killed on the job; and
- Burial benefits: pay some of the deceased worker's funeral expenses.

#### **Employee Responsibilities**

An injured employee has legal responsibilities he or she must meet to establish a claim for compensation. Failure to do so may result in the employee being held responsible for payment of medical bills. These responsibilities include:

**1. Notifying the employer within 30 days.** The injured employee must notify supervisory or management personnel and the TMD Workers' Compensation coordinator in State Human Resources, about an on-the-job injury not later than the 30<sup>th</sup> day after the injury occurs, or if the injury is an occupational disease, not later than the 30<sup>th</sup> day after the employee knew or should have known that the disease might be related to the employment.

**2. Filing a claim within one (1) year.** The injured employee must file with the Texas Department of Insurance, Division of Workers' Compensation (DWC), a claim for compensation, not later than one (1) year after the date of the injury, or if an occupational disease, not later than one (1) year after the employee knew or should have known that the disease was related to the employment.

**3. Providing a written statement for work-related exposure to communicable diseases.**

**a. HIV -** For the purposes of qualifying for workers compensation benefits, the law requires that an employee who claims a possible work-related exposure to HIV infection must provide a written statement of the date and circumstances of the exposure. The employee must document that within 10 days after the date of the exposure, he or she was tested for HIV.

**b. Communicable diseases -** For purposes of qualifying for Workers' Compensation benefits, if the employee is an emergency responder, he or she must provide the employer with a sworn affidavit of the date and circumstances of the exposure. The employee must also document that within 10 days after the date of the exposure, he or she was tested for the communicable disease.

#### **4. Seeking Medical Treatment**

If an employee is injured on the job and lives in the service area, the Health Care Network (HCN) must be used for medical treatment. Other than in emergency situations, employees must be treated by doctors who are part of the HCN. If an injured employee seeks medical treatment from a doctor who is not a part of the HCN without prior approval from SORM, the employee may be responsible for payment. For help locating the service area and finding doctors in the HCN, contact the Workers' Compensation Coordinator in State Human Resources.

#### **RETURN TO WORK FOLLOWING SERIOUS ILLNESS OR INJURY**

It is the policy of the TMD provide a return to work program as the means to return employees to meaningful, productive employment following injury or illness. In order to provide the highest level of quality service to the citizens of Texas, it is necessary for every employee of the Texas Military Department to be available for work, ready, and capable of performing the duties and responsibilities for which the employee was hired.

The return to work program provides opportunities for any employee of this department who sustains either a compensable injury during the course and scope of employment, a disability as defined by the Americans with Disabilities Act, and/or a serious health condition as defined by the Family Medical Leave Act to return to work at full duty. If the employee is not physically capable of returning to full duty, the return to work program

provides opportunities when available for the employee to perform a temporary assignment in which the employee's regular position is modified to accommodate the employee's physical capacities, or to perform an alternate duty position.

This return to work program is not to be construed as recognition by this department, its management or its employees that any employee who participates in the program has a disability as defined by the Americans with Disabilities Act of 1990. If an employee sustains an injury or illness that results in a disability under the ADA, it is the employee's responsibility to inform his or her supervisor or a person in a responsible management position when a disability under the ADA exists and that a reasonable accommodation is necessary to perform the essential functions of his or her job.

All employees, divisions, and facilities of the Texas Military Department are expected to support and fully comply with this policy and the return to work procedures provided in the attached appendix to implement this policy.

### **TEXFLEX BENEFITS PLANS**

A TexFlex<sup>SM</sup> flexible spending account (FSA) allows employees to set aside money from each paycheck, pre-tax, to use for eligible out-of-pocket expenses. The employee can contribute to a health care and/or day care account. Employees may choose to participate at the time of hire, or during open enrollment periods.

### **RETIREMENT BENEFITS**

The state's retirement plan is a defined benefit plan and offers defined contribution retirement plans to employees. TMD state employees are covered under a defined benefit plan (or traditional pension plan) through the ERS. Employees also have the opportunity to contribute to deferred compensation plans such as 401(k) or 457 accounts. These accounts can supplement the current state retirement plan and offer employees the option of choosing how they will invest their money.

The Legislature establishes the state and employee retirement contribution rates biennially for various retirement systems and funds; these rates are set in the General Appropriations Act. An employee's portion of the retirement contribution is deducted each month from the employee's pay and deposited into an employee savings account. The State deposits its portion of the retirement contribution into a state accumulation account. The employing agency is responsible for deducting the amount of the employee's contribution from the employee's pay. The deduction process requires no employee consent because the employee consents to the automatic deduction when he or she becomes a member of the ERS program.

### **DEFERRED COMPENSATION**

In addition to a state employee's established ERS pension plan, an employee has the opportunity to save a portion of his or her income by making traditional pre-tax or Roth after-tax contributions to a deferred compensation plan.

Under the Texa\$aver Program, state agency employees can enroll in two types of deferred compensation plans available: a 401(k) and a 457. The deferred compensation plans also have "catch-up" provisions that allow employees who meet the eligibility requirements to make up for lost time.

#### **401(k) Plan Automatic Enrollment:**

An employee who begins state employment on or after January 1, 2008, automatically participates in a 401(k) plan unless the employee elects not to participate in the plan. The contribution is made by automatic payroll deduction and represents one (1) percent of an employee's pay. Unless otherwise directed by the employee, this contribution is placed in a default investment product selected by the board of trustees for ERS. An employee participating in a 401(k) plan under this legislation may elect to end participation in the 401(k) plan, to contribute to a different investment product, or to contribute a different amount to the plan. Employees are provided the opportunity to make this election as part of the new employee orientation process.

Additional information about Texa\$aver and the 401(k) and 457 plans is available on the ERS web site.

### **SERVICE CREDIT**

Service credit toward an employee's eligibility for retirement may be established in other ways. If eligible, these may be:

- Vacation and sick leave;
- The transfer of service credit;
- Purchase of withdrawn service;
- Purchase of unestablished service;
- Purchase of waiting period service;
- Purchase of military service; and
- Purchase of additional service.

Additional information regarding the use of vacation and sick leave, transfer of service credit, and the purchase of service credit and payment options is available on the ERS Web site at <http://www.ers.state.tx.us/>

### **AWARDS AND GIFTS**

TMD may give employee awards for outstanding professional achievement or service. The award amount may not exceed \$100.00. Any award is subject to the availability of funds and management's sole discretion.

### **HEALTH AND WELLNESS PROGRAMS**

TMD aims to create a worksite that encourages healthy lifestyles. The Wellness Program is a voluntary program of formal and informal activities designed to result in an increase in the health, fitness, and productivity of TMD employees. This proactive program is geared toward prevention and behavior change, and will be administered in accordance with applicable federal and state laws, including confidentiality requirements and antidiscrimination provisions.

#### **Applicability**

The program applies to all TMD state employees. Any employee who participates in a Wellness Program activity or service must complete a release and authorization form provided by the department before participating in the program. Releases will be maintained in each employee's official personnel file in State Human Resources.

Employees who intend to participate in a Wellness Program activity involving physical exertion or exercise are encouraged to consult with a physician before beginning any type of physical activity. In the event the department should grant an incentive or reward to groups or individuals for participation in any Wellness Program activity, the department will make reasonable accommodations for individuals who require them in order to allow them to participate.

#### **Physical Fitness Program**

In accordance with the TMD On-Duty Physical Fitness Training Policy (TMD P17-03), state employees may be granted three (3) hours per week to exercise during normal working hours. A copy of this policy is posted at <https://tmd.texas.gov/texas-military-department-policies-and-regulations>. Employees are not required to make up this time or use leave.

- Exercise time may not exceed one (1) hour per day;
- Exercise time is not cumulative and may not be carried forward or saved for use the next week;
- Exercise time may be used at any time during the work day, or combined with breaks/lunch to give the employee more time for wellness activities; and
- In addition to the exercise time, employees may attend on-site wellness seminars/activities when offered.

Employees must seek approval from their supervisor prior to using the time for exercise. Supervisors are encouraged to grant an employee this time each week as workload and coverage responsibilities permit. Supervisors must ensure that mission requirements and day-to-day workload commitments are met, regardless of previous arrangements. Participation in the program is a privilege that may be suspended if abused. A supervisor may also temporarily suspend participation when necessary to meet workload demands.

### **Wellness Committee & Coordinator**

The Wellness Committee is a team of employees who formally meet and plan activities to promote good health for themselves and for their fellow workers. The TMD Wellness Coordinator is the Chair of the Wellness Committee and is responsible for planning, coordinating and implementing the Wellness Program. The TMD Wellness Coordinator serves as the wellness liaison between TMD and the Statewide Wellness Coordinator at the Department of State Health Services. Each program or directorate may designate at least one voluntary committee team member to help ensure equitable wellness opportunities across the department.

### **Program Content Guidelines**

The Wellness Program may consist of, but is not limited to, activities that raise awareness and promote healthy lifestyle changes. Examples include coordinating walking/running groups, promoting exercise or fitness classes/groups, and offering exercise facilities and equipment (showers, locker rooms, on-site gyms). The Wellness Program should raise awareness or interest in health through health education. Resources and information may be distributed to all employees intended to increase knowledge and encourage employees to adopt healthy behaviors. Examples include health promotion literature, newsletters, on-site wellness seminars, education sessions such as lunch-n-learns, classes or webinars etc.

Wellness activities may be scheduled before, during, between, or after normal working hours as deemed appropriate in coordination with the Wellness Committee and authorized by the Executive Director. Scheduling will be done in a manner to avoid interference with the normal work of the department or with public access to services and facilities of the department.

### **Wellness Leave**

Pursuant to Texas Government Code 664.061(3), TMD may award eight (8) hours of additional leave time each 12 month period to employees who receive a physical examination and complete an online health risk assessment. Supporting documentation must be submitted to the Wellness Coordinator. Once awarded, the wellness leave balance will be updated in CAPPs. Wellness leave expires if not used within 12 months from the date it is earned, and will not be paid to the employees upon separation from employment.



### **MEMBERSHIP IN AND DUES FOR PROFESSIONAL ORGANIZATIONS**

TMD may not use appropriated money to pay for membership in or dues for a professional organization unless the Adjutant General or the Executive Director reviews and approves the expenditure. Request for payment or reimbursement of membership dues for professional organizations must be approved by the Adjutant General or Executive Director before such expenses are paid or reimbursed.

### **MOVING AND STORAGE EXPENSES**

TMD may use appropriated funds to pay expenses incurred in moving the household property of state employees who are:

1. Reassigned from one headquarters to another if the department determines that the best interests of the State will be served and the distance between headquarters is at least 25 miles; or
2. Employed at a facility that is being closed or is undergoing a reduction in force if the employee accepts a position with the department at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.

TMD must use state-owned equipment to move an employee if it is available. If not, the department may pay for the services of a transportation company or self-service vehicles to make the move.

A state employee is entitled to be reimbursed for expenses incurred in traveling by a personally owned or a leased motor vehicle for a move described above at the rate provided by the General Appropriations Act for business-related travel by the employee.

TMD may also pay for or reimburse a state employee for storage expenses incurred if the employee is required to live in state-owned housing and the housing is not available when the move is made.

### **STATE-OWNED HOUSING**

There are certain situations in which TMD provides housing for employees. This housing may be at a reduced cost or at no cost to employees based upon provisions in the General Appropriations Act. Employees provided state-owned housing are expected to comply with applicable rules and policy governing occupancy and/or payments.

### **UNEMPLOYMENT COMPENSATION**

#### **Overview**

Unemployment insurance (UI) is an insurance program paid for by employers that provides benefits to qualified individuals unemployed through no fault of their own.

Individuals may file for UI benefits in two ways: on-line at Texas Workforce Commission's "Apply for Benefits" Internet application or by calling one of TWC's Tele-Centers. Information about how to file a claim is also available on TWC's Web site at <http://www.texasworkforce.org>.

Employees separated due to a reduction in force are entitled to assistance by TMD in obtaining unemployment benefits. Otherwise, former TMD employees may seek assistance with unemployment benefits through the Texas Workforce Commission.

### **Coverage for State Employees Working Outside the State**

TWC may enter into agreements with agencies of other states or federal agencies to cover an employee who performs his or her duties outside of Texas. If TWC is unable to execute a reciprocal agreement with another state, the employing Texas state agency shall become a reimbursing employer if permitted by the laws of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, it may pay the required contributions for that employee from funds available for that purpose.

### **Employee Holidays**

State employees are entitled to observe designated national, state, and optional holidays as follows:

A national holiday includes only the following days:

- (1) the first day of January, "New Year's Day";
- (2) the third Monday in January, "Martin Luther King, Jr., Day";
- (3) the third Monday in February, "Presidents' Day";
- (4) the last Monday in May, "Memorial Day";
- (5) the fourth day of July, "Independence Day";
- (6) the first Monday in September, "Labor Day";
- (7) the 11th day of November, "Veterans Day,";
- (8) the fourth Thursday in November, "Thanksgiving Day"; and
- (9) the 25th day of December, "Christmas Day."

A state holiday includes only the following days:

- (1) the 19th day of January, "Confederate Heroes Day,";
- (2) the second day of March, "Texas Independence Day";
- (3) the 21st day of April, "San Jacinto Day";

- (4) the 19th day of June, "Emancipation Day in Texas,";
- (5) the 27th day of August, "Lyndon Baines Johnson Day,";
- (6) the Friday after Thanksgiving Day;
- (7) the 24th day of December; and
- (8) the 26th day of December.

Offices are not subsequently closed when a designated holiday falls on a Saturday or Sunday.

An "optional holiday" includes only the days on which Rosh Hashanah, Yom Kippur, Good Friday, or Cesar Chavez Day falls. A state employee is entitled to observe an optional holiday *in lieu of* any state holiday or state holidays on which the employee's agency is required to be open and staffed to conduct public business.

For an up-to-date holiday schedule for the state fiscal year please see:

<http://www.hr.sao.texas.gov/Compensation/holidays.html>

Additional guidance regarding agency holiday leave that may be granted at the discretion of the Adjutant General or designee may be published separate from this handbook.

# CHAPTER V

## ETHICS AND STANDARDS OF CONDUCT

### OVERVIEW

Government service requires unusually high standards of conduct by employees to ensure the proper performance of government business and to maintain the confidence of citizens in their government.

This issuance establishes the policy of the Texas Military Department (TMD) with regard to ethics law for state employees within the department. Final authority for interpreting and implementing this policy rests with the Adjutant General.

The TMD General Counsel is the Ethics Coordinator and serves in an advisory capacity to the state Human Resources Director in administering the ethics policy.

### MINIMUM REQUIREMENTS

Each state employee is responsible for being familiar and complying with this policy. The Ethics Coordinator and the state Human Resources Director are available for guidance and interpretation of statutes and policies affecting employee responsibility and conduct.

### REPRESENTATION OF TMD

Each state employee is expected to maintain the highest standards of honesty, integrity, impartiality, and conduct, and to avoid misconduct, conflicts of interest, or the appearance of conflicts of interest.

Employees who may, from time to time, be directed or requested by the Adjutant General or Executive Director, or his/her designee, to act as an official representative of the department for a specific purpose or occasion, are to observe the following general guidelines with appropriate judgment:

- The conduct of an official representative is to be appropriate for the occasion;
- Any statements made formally or informally are to reflect favorably and respectfully with reference to TMD and its staff;
- No unauthorized commitments or promises, either direct or implied, are to be made verbally or in writing on behalf of the department by any employee representing TMD;
- Statements of fact regarding department programs are not to be issued unless previously published, authenticated, and/or approved by the Adjutant General or Executive Director, or his/her designee. Materials are not to be made public unless also cleared in the same manner;

- Nothing is to be done publicly, by work or deed, that would discredit TMD officials, employees, or programs; and
- No new information is to be made public without prior clearance from the Adjutant General or Executive, or his/designee.

### **COMMUNICATION WITH THE PRESS**

All state employees will forward inquiries from the press to the Public Affairs Office. The Public Affairs Office will give situational awareness to the Office of the Executive Director, and the Office of the Adjutant General.

### **LAWSUITS RELATED TO OFFICIAL DUTIES**

Employees who receive a complaint or summons in a civil suit involving their duties with TMD shall immediately report the matter to their supervisor and State Human Resources.

An employee who is sued civilly or charged with violation of local, state or federal laws as a result of the performance of official duties may be entitled to be represented, free of charge, by TMD. The employee may hire a legal representative at his/her own expense.

### **FALSE STATEMENTS**

An employee shall not make false or malicious statements about the TMD, its customers, and/or its employees which harms the agency's image, damages morale, or causes severe friction among co-workers or customers.

### **ASSAULTS AND THREATS AGAINST EMPLOYEES/VIOLENCE IN THE WORKPLACE**

The Texas Military Department is committed to workplace safety and prohibiting violence in the workplace. TMD expressly prohibits and will not tolerate statements or behavior that can be considered as direct or indirect threats to the safety of other individuals in the workplace or persons with whom the department conducts business. TMD will assume all threats of violence are legitimate, including those purportedly made in jest, and will conduct appropriate investigations.

It is the policy of the Texas Military Department that:

- All employees shall be provided with a safe, non-violent work environment;
- Every employee has a responsibility to report perceived or actual incidents of violence;
- Every report of perceived or actual incidents of violence shall be thoroughly investigated; and
- Appropriate sanctions shall be applied to persons who violate this policy.

**Definitions**

Acts or threats of violence that are prohibited include, but are not limited to, the following:

- Physical acts of violence inflicted on other people, including assault and battery, homicide, attempted homicide, and rape;
- Written or verbal threats of violence;
- Threatening conduct, such as harassing or intimidating others, displaying intense anger, and showing off or actually brandishing a weapon or item which could be used as a weapon;
- Bomb threats;
- Deliberate destruction of equipment and property, including arson; and
- Other actions that communicate a direct or indirect threat of physical or psychological harm.

Employees must report to their supervisors, or to any supervisor or manager, all assaults, threats, or forcible interference against them in the course of their official duties. All assaults or threats against members or their families, when made to impede the performance of the employee's official duties, must also be reported.

**POLITICAL ACTIVITIES**

None of the moneys appropriated by this Appropriations Act, regardless of their source or character, can be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition does not prevent any official or employee of the state from furnishing to any Member of the Legislature or committee upon request, or to any other state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official not considered under law to be confidential information.

No TMD employee is authorized to use public funds, regardless of the funds source or character, to influence the outcome of an election, or to influence whether a legislative measure passes or fails. However, a state employee may be delegated the authority to provide department related information, not otherwise prohibited from disclosure, to any member of the legislature, a legislative committee, or any member of the public, when lawfully requested.

TMD may not use any money under its control, including appropriated money, to finance or otherwise support the candidacy of a person for office in the legislative, executive, or judicial branch of state government or of the government of the United States. Additionally, TMD may not use these funds to directly or indirectly hire employees to assist in such a candidacy. No TMD officer or employee may use a state-owned or state-leased motor vehicle to assist a candidate in his or her campaign for office.

TMD may not use state funds to pay a person or entity, or any partner, employee, employer, relative, contractor, consultant, or related entity of such a person or entity, required to register as lobbyist under Chapter 305 of the Texas Government Code.

TMD may not use appropriated money to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 of the Texas Government Code to register as a lobbyist. However, to the extent the department makes an authorized payment on behalf of an employee to an institution of higher learning, such payment is not prohibited where a portion thereof is considered a mandatory student services fee and is used to pay reasonable dues to an organization that represents student interests before the legislature or the Congress of the United States.

TMD shall provide each officer an employee a copy of this section and require a signed receipt on delivery of that copy. A new copy and receipt is required if a provision of this section is subsequently changed. The department shall maintain the receipts and make them available for public inspection.

### **FRAUD**

TMD has zero tolerance for any type of fraud. Every TMD employee is responsible for ensuring that the public's expectation of honesty and integrity in government is met.

TMD employees must not waste, misuse, or steal state property. When an employee has reasonable cause to believe that a loss has occurred due to fraudulent or unlawful conduct, he or she must report that loss to the State Auditor.

A "reasonable cause to believe" occurs when facts exist that would cause a reasonably prudent person to determine that an offense has been committed. However, employees should consider the following prior to reporting an incident:

- The belief is based on more than a mere suspicion, and
- The individual is able to point to particular facts that support the belief that a loss may have occurred as a result of fraud or unlawful conduct. (The employee is not required to establish probable cause or identify a suspect.)

Individuals should report fraudulent or unlawful conduct to their supervisor, the State Human Resources Director or Executive Management. If an individual believes a felony or misdemeanor has occurred, he or she should also contact the appropriate law enforcement authority.

### **STANDARDS OF PERFORMANCE**

Employees must conscientiously perform their duties to the highest standards for the department and the public. Employees are required to respond readily to the direction of

their supervisors, to cooperate fully with all properly constituted authorities and to do their work promptly and accurately. All relations with fellow employees, the public, and others must be conducted in a manner which will not needlessly cause dissension or discord among employees or disrupt official business. Differences or disagreements with fellow employees or supervisors need not go unexpressed. These situations can be handled properly through the chain of command or other dispute resolutions process as appropriate.

### **EMPLOYEE CONDUCT**

All TMD employees are expected to conduct themselves in a professional manner when performing duties related to the department; and follow rules of conduct that will protect the interests and safety of personnel. Conduct prohibited by policies in this handbook is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, or business-related social events. It is not possible to list all forms of behavior that are considered unacceptable in the workplace, but the following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

- Falsification of employment records, employment information, or other records.
- Falsification of work time;
- Theft or the deliberate or careless damage of any TMD property;
- Unauthorized use of TMD equipment, materials or facilities;
- Possessing, distributing, selling, transferring, or using illegal drugs in the workplace;
- Being under the influence of alcohol or illegal drugs in the workplace;
- Unlawfully carrying firearms on premises owned or occupied by TMD;
- Engaging in criminal conduct whether or not related to job performance;
- Insubordination, including but not limited to failure or refusal to obey the orders or instructions of any supervisor or member of management;
- Using abusive or threatening language at any time during working hours or while on premises owned or occupied by TMD;
- Unreported absence;
- Failing to obtain permission to leave work during normal working hours. This does not prevent employees from leaving the premises during their scheduled lunch period;
- Failing to observe (or obtain permission to deviate from) working schedules, including rest and lunch periods;
- Abusing sick leave;
- Failing to provide a physician's certificate when requested or required to do so;
- Working overtime without authorization or refusing to work assigned overtime;
- Violating any safety, health, or security policy, rule or procedure of the TMD; or



- Committing a fraudulent act or a breach of trust in any circumstances.

Although employment may be terminated at-will by either the employee or TMD at any time, without following any formal system of discipline or warning, TMD may exercise discretion to utilize forms of discipline that are less severe than termination. Examples of less severe forms of discipline include verbal warnings, written warnings, demotions, and suspensions. While one or more of these forms of discipline may be taken, no formal order or procedures are necessary.

### **STATUTORY STANDARDS OF CONDUCT**

Section 572-051, Texas Government Code, sets forth specific standards of conduct for officers and employees of the State.

Sec. 572.051 STANDARDS OF CONDUCT. A state officer or employee should not:

- (1) Accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) Accept other employment or engage in business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) Accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) Make personal investments which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employees official powers or performed the officers or employees official duties in favor of another.

### **CONFLICTS OF INTEREST**

A conflict of interest exists when a private interest (financial, personal, or one resulting from non-government employment) might cause an employee:

- To perform his or her official duties in a way other than he or she would have if he or she had no such private interest; or

- To use information gained through official duties for personal benefit.

An apparent conflict of interest exists whenever a reasonable person might suspect that a private interest (financial, personal or one resulting from non-government employment) might cause an employee:

- To perform his or her official duties in a way other than he or she would have if he or she had no such private interest; or
- To use information gained through official duties for personal benefit.

In addition Sec.437.060, Texas Government Code, sets forth specific provisions regarding conflict of interest as follows:

- (a) A person may not be appointed Adjutant General, a Deputy Adjutant General, a General Officer, Judge Advocate General, or Executive Director if the person is required to register as a lobbyist under Chapter 305 of the Texas Government Code because of the person's activities for compensation on behalf of a profession related to the operation of the department.
- (b) An officer, employee, or paid consultant of a Texas trade association in the field of defense or veterans affairs may not be appointed Adjutant General, a Deputy Adjutant General, a General Officer, Judge Advocate General, or Executive Director.
- (c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of defense or veterans affairs may not be appointed Adjutant General a Deputy Adjutant General, a General Officer, Judge Advocate General, or Executive Director;
- (d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

### **PERSONAL INVESTMENTS**

An officer or employee of the department may not make personal investments which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest.

### **DISCLOSURE OF INFORMATION / CONFIDENTIALITY**

Employees shall not disclose confidential information. If an employee discloses confidential information, he or she may be terminated from employment with the department.

**Disclosure of Information**

Employees shall not disclose confidential information that is excepted from public disclosure under the Texas Public Information Act (Chapter 552 of the Texas Government Code), or information that has been ordered sealed by a court, that was acquired by reason of the employee's official position.

It is the responsibility of each employee to ensure that, when dealing with non-TMD personnel, there is no improper disclosure of non-public information. All questions concerning the disclosure of information should be directed to the appropriate supervisor or manager, the General Counsel's Office (FOIA/TPIA Officer).

**ACCEPTANCE OF GIFTS AND APPEARANCE OF IMPROPRIETY**

A state officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct. Even where the acceptance of a gift would not be a technical violation of law, officers and employees of the TMD should refrain from accepting such a gift, where its acceptance would create the appearance of impropriety.

**WEAPONS**

State employees must comply with the Adjutant General's Policy on Privately Owned Weapons. A copy of this policy is posted at <https://tmd.texas.gov/texas-military-department-policies-and-regulations>.

**DRUG-FREE / SMOKE-FREE WORKPLACE**

TMD is a drug-free workplace. The unlawful manufacture, distribution, dispensing, possession, or use of alcohol or a controlled substance, including inhalants, is prohibited on the premises of all department facilities. Any state employee who violates this prohibition, whether on department premises or while traveling on duty of the department, will be subject to disciplinary action up to and including termination. All state employees, as a condition of employment, will comply with this policy.

**Purpose and Scope**

The purpose of the drug abuse policy of the department is to provide a safe, productive, drug and alcohol free workplace; to educate employees about the dangers of drug and alcohol abuse; and to encourage employees who need and desire treatment to obtain that treatment. Through implementation of this policy, the department strives to create a healthier and more productive work environment for all employees and to assure respect and support for each employee as an individual.

TMD's drug abuse policy applies to all state employees regardless of classification or position and includes temporary and part-time employees. TMD's drug abuse policy does not alter or restrict the authority of the Adjutant General to make employment-related decisions.

**Coverage**

TMD's drug abuse policy applies to the use of illegal drugs and inhalants, as well as the abuse of alcoholic beverages and prescription drugs.

**Consequences**

TMD employees are expected to maintain satisfactory job performance and to adhere to a high standard of conduct at all times. It is against department policy for employees to use illegal drugs or inhalants, or to abuse alcohol or prescription drugs. Being found guilty or accepting deferred adjudication for "Driving under the influence" (DUI) will constitute abuse of alcohol or drugs and will subject the employee to termination. Violations of this policy will be reviewed on a case-by-case basis and may result in adverse personnel action, up to and including termination of employment.

**Available Treatment Programs**

TMD employees interested in acquiring information about available treatment programs offered for state employees should contact state Human Resources.

**Requirement for Participation**

Participation in an available treatment program is voluntary.

**Limited Drug Testing**

Starbase, ChalleNGe, and security officer employees may be required to participate in the drug testing screening according to the specific policy adopted for those programs.

**Smoking**

Smoking of any type (tobacco, ecigarette, etc...) is prohibited in all offices, work areas, and common areas of buildings under the control of the Texas Military Department. Common areas are defined as all lobbies, elevators, public restrooms, stairwells, enclosed corridors, snack bars or other food service areas, and all conference rooms.

Smoking is prohibited in all areas of buildings occupied by department employees. Employees may use their normally allowed breaks to smoke. A designated smoking area may be assigned outside of each building by the supervisor(s) in charge of the building.

All levels of supervision share responsibility for the implementation of this policy. Certain agency programs may be declared smoke-free due to their unique relationship to the community.

**POST-EMPLOYMENT RESTRICTION**

**Certain Employment for Former State Officer or Employee Restricted.**

A former state officer or employee of a Texas Military Department (TMD) who during the period of state service or employment participated on behalf of TMD in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the officer's or employee's service or employment with the state agency ceased.

## CHAPTER VI

### EMPLOYEE COMPLAINT PROCEDURES

#### **Policy**

It is important that employees are treated fairly and receive prompt responses to problems and concerns. For this reason, the Texas Military Department (TMD) provides informal and formal procedures to promote prompt resolution of work-related complaints. Whenever possible, complaints should be resolved in an informal setting, which may include mediation or other alternative dispute resolution process.

Issues may be raised to the TMD Ombudsman at 512-782-5057. The Ombudsman has the authority to investigate complaints, and either resolve them; or present the issue to the Executive Director (or if necessary the Adjutant General through the Chief of Staff) with recommendations about further actions to resolve the matter (e.g., referral for further investigation, mediation, etc.).

The State Human Resources (HR) Director (or his/her designee) serves as the employee grievance coordinator when a complaint calls for formal resolution. The procedures below may be used freely without fear of retaliation. State Human Resources is available to assist throughout the process. Subject to certain exceptions and limitations listed below, an employee may file a grievance regarding any employment-related matter, including working conditions, employment discrimination, harassment, and adverse personnel actions.

If the problem involves discriminatory harassment, sexual harassment and/or discrimination (including disability accommodation issues), reference to those policies should be made to initiate a complaint. When unsure which policy applies, contact should be made with state Human Resources or TMD's designated Ombudsman for assistance.

This policy establishes grievance (or formal complaint) processing and resolution timelines that encourage resolution of issues at the lowest level possible; and provides employees with a clear expectation of the approximate timelines within which they should receive a grievance response. However, a delay in processing or resolving a grievance does not create any additional right for the employee or have any impact on whether the requested relief will be granted.

A decision of the Executive Director is final and not subject to review under these grievance procedures.

## **GRIEVANCE/COMPLAINT PROCESS AND PROCEDURES**

### **General Provisions**

The time limits below are subject to modification on a case-by-case basis due to business necessity, in depth investigations, etc. The Executive Director has final authority to resolve any disputes regarding the implementation of these Grievance

Procedures, including determination of the appropriate decision makers, subject only to the authority of the Adjutant General.

Grievances will be assigned to the appropriate level manager within the employee's chain of command for investigation; or when appropriate to an independent investigator. Employees, supervisors and managers are always free to resolve disagreements informally apart from the procedures established below.

A neutral investigator outside of the employee's supervisory chain of command may be assigned to gather information and present findings to the decision maker. This will normally be done when the investigation involves sensitive employment complaints (e.g., harassment or discrimination complaints); or the situation is so severe that extraordinary measures may be required (e.g., physical assault or threat of physical harm). An investigator may provide conclusions and/or recommendations to the appropriate decision maker if asked to do so after his/her findings are presented.

### **Procedures**

#### **Step One:**

##### **Discuss Complaint with Immediate Supervisor**

Complaints often arise from misunderstandings that can be settled promptly, on an informal basis at the immediate supervisory level. The Adjutant General strongly encourages informal resolution of complaints. Employees should **first** discuss the complaint with their immediate supervisor within three (3) business days of the situation whenever possible. Every effort should be made, both on the part of the supervisor and the employee, to address the complaint at this level. If the complaint is not resolved as a result of this discussion, or such discussion is not appropriate under the circumstances, then proceed to Step Two. If the action in dispute involves suspension of employment, Steps One and Two should be bypassed.

*Note: If the immediate supervisor is a Director level (or department head), Steps Two and Three should be bypassed and the complaint submitted directly to the state Human Resources Director who will send a copy to the Executive Director and schedule a meeting for the employee, state Human Resources Director and the Executive Director.*

**Step Two:**

**Prepare and Submit the State Employee Complaint Form to the state Human Resources Director for Investigation by Second-Level Supervisor/Manager or an Independent Investigator. The State Employee Complaint Form is included in the attached appendix.**

If an employee feels his/her complaint was not resolved in discussions with his/her immediate supervisor, the employee may prepare and submit a formal written complaint for review by the person to whom the employee's immediate supervisor reports ("second level supervisor"). To do so, the employee should prepare a State Employee Complaint Form and submit it to the state Human Resources Director within seven (7) business days of the Step One discussion with the immediate supervisor (or within seven (7) business days of the event being grieved if Step One is bypassed).

The State Employee Complaint Form should be completed as accurately as possible; and the submission should include any applicable documents issued to the employee relating to the action, event, or condition being grieved (e.g., copy of shift change notice, performance evaluation, or employee disciplinary action record).

A grievance challenging an adverse personnel action must identify the specific adverse personnel action being challenged.

The employee must use his/her own personal time and resources when preparing a grievance. State time and resources, including postage and supplies, may not be used in the preparation of a grievance. However, an agency fax machine or email may be used to submit a grievance to the state Human Resources Director.

The state Human Resources Director will then review the complaint, and send a copy to the second-level supervisor and the immediate supervisor (if appropriate) for investigation. When necessary or deemed appropriate under the circumstances, and/or based upon the advice of counsel, the state Human Resources Director will coordinate assignment of an investigator outside the employee's chain of command to conduct the investigation.

As a general rule, the official investigation by the supervisor or the assigned investigator should be completed within 30 calendar days after assignment of the complaint. The employee will be informed if the investigation cannot be completed within this time period, and provided weekly updates thereafter until the investigation is completed. No single investigation tool is required to be used. An investigation may, for example, be conducted in accordance with Army Regulation 15-6 investigation procedures.

Once the investigation has been completed, a written decision will be delivered to the employee and a copy provided to the state Human Resources Director. If the investigation was conducted by an investigator outside the employee's chain of command, the



investigator will present his/her findings to the decision maker. After reviewing the findings, the decision maker with the advice of counsel may ask the investigator for recommendations. The decision maker will evaluate the findings, any recommendation(s) and the various options; and then decide the appropriate course of action based on whether the grievance was substantiated (in whole or in part) and if so, the severity of the situation. The decision maker will deliver a written decision to the employee and provide a copy to the state Human Resources Director.

*Note: If the resolution of the complaint was decided after review of findings by TMD's Office of the Inspector General or another assigned neutral investigator, the employee grievance procedure is complete at the conclusion of Step Two. (Actions taken following a formal investigation include a legal review and are vetted through the Executive Director and/or Adjutant General).*

If the investigation was conducted by the second-level supervisor (other than a director or program manager) and the complaint is not resolved to the employee's satisfaction, he/she may proceed to Step Three (Director or Program Manager Director Review).

*Note: If the second-level supervisor is a (Director or Program Manager) the employee should proceed to Step Four (Executive Director review) at the conclusion of Step Two.*

### **Step Three:**

#### **Submit Complaint Form and Any Prior Decision to the State Human Resources Director for Review by the Program Manager/Director.**

If the employee is not satisfied with the Step Two decision **made by a second-level supervisor/manager**, he/she may seek a review of the decision within five (5) business days of receipt of the Step Two decision. The employee must send a written request to the state Human Resources Director, including a copy of his/her complaint, the Step Two decision, and a detailed and specific statement of the reason the employee remains dissatisfied.

A meeting between the employee, Program/Department Director and the state Human Resources Director will generally be held within five (5) business days after receipt of the written request. The Director or Program Manager will conduct any necessary follow-up and issue a written decision, generally within five (5) business days of the meeting. A copy of the written decision will be provided to the employee and the state Human Resources Director.

### **Step Four:**

#### **Submit Complaint Form and Any Prior Decision to the State Human Resources Director for Final Review by the Executive Director**

If the employee is not satisfied with the Step Three decision, he/she may seek a review of the matter by submitting a written request including the complaint, Step Two and if applicable Step Three decision(s), and a detailed statement explaining why the employee dissatisfied with the action(s) taken at the previous Steps to the state Human Resources Director within seven (7) business days of receipt of the Step Three decision. The state Human Resources Director will ensure the request is complete and forward the request to the Executive Director for review. The Executive Director will provide the final written response, generally within fourteen (14) business days after receipt. The decision of the Executive Director is final and completes the internal employee grievance process.

*Note: If a state employee's complaint involves the Executive Director, the complaint should be submitted to the Adjutant General through the TMD Chief of Staff.*

### **Additional Information**

#### **Computing Timelines**

The following guidelines apply when computing timelines established by this policy:

- (1) A grievance is considered to be filed only when it has been actually received by the state Human Resources Director in the Central Office at Camp Mabry in Austin. The grievance file date is not based on the date that the grievance is mailed or otherwise sent to one of these employees.
- (2) When calculating maximum time periods or due dates for an action in the grievance process, the date of an event (e.g., the date of receipt of a disciplinary document, a grievance assignment, or a grievance decision) is not counted. The first day following the event is counted as the first day of the applicable time period.
- (3) The end of a maximum time period or a due date that falls on a weekend or holiday will be extended to the next regular workday.
- (4) Unless specified otherwise within this policy, references to decision authority will mean the grievance decision authority.

#### **Grievable and Non-Grievable Issues**

Issues that **can** be grieved under these procedures ("grievable issues") include but are not limited to the following:

- (1) Disciplinary actions and other forms of adverse personnel action (subject to the limitations in the list of non-grievable issues and limitations established by agency policies relating to administrative separation);
- (2) Working conditions; and

(3) Unlawful conduct or other serious impropriety (e.g., inappropriate sexual conduct, any form of illegal discrimination; retaliation prohibited by policy or law).

Issues that **may not** be grieved (“non-grievable issues”) under these procedures include but are not limited to the following:

- (1) Legislative action;
- (2) Employee position classification or reclassification;
- (3) Administrative suspension with pay;
- (4) Discipline in progress but not yet issued;
- (5) Discipline or other adverse personnel action issued to someone else;
- (6) A recommendation for termination of employment;
- (7) A decision to conduct an investigation or the assignment of an investigation to a particular person;
- (8) The findings resulting from an investigation conducted by TMD’s Office of the Inspector General or other designated investigator;
- (9) A decision by the state Human Resources Director, with the concurrence of the Executive Director, to dismiss a grievance as provided under “Grievance Revision or Dismissal” below;
- (10) A decision of the employee grievance coordinator to dismiss a grievance or accept a grievance for processing;
- (11) The assignment of a grievance to a particular decision authority;
- (12) A delay in grievance processing or resolution,
- (13) A directive or approval issued by the Adjutant General or Executive Director, including but not limited to termination of employment, other disciplinary or payroll action or a change in working conditions;
- (14) An agreement reached through employee mediation;
- (15) Acceptance of a voluntary resignation; and
- (16) A designation of ineligibility for rehire.

**Employee Access to Documents.**

An employee grieving an adverse personnel action may include in his/her grievance a request for copies of any documents that are not in the employee's possession and were relied upon for the challenged adverse personnel action. Upon request, copies of such evidence will be provided subject to the following.

- (1) TMD has the discretion to delete names from copies of documents provided to the employee upon a determination that the names are not necessary for the fair resolution of the grievance.
- (2) Prior to delivery of the documentary evidence to the employee, any information which is confidential by law will be deleted.
- (3) Audio or video recordings which contain confidential information (e.g., which include names or pictures of Texas ChalleNGe Academy youth) will not be released to the employee but will be made available for review.

**Grievance Revision or Dismissal.**

The state Human Resources Director may request an employee to revise and re-file any grievance that is incomplete and/or unclear. If revision is required, the state Human Resources Director will set a deadline by which the revised grievance must be filed.

The state Human Resources Director may, with the concurrence of the Executive Director, dismiss any grievance which:

- (1) is considered a non-grievable issue under this policy;
- (2) is not received by the state Human Resources Director within the applicable deadline and good cause for delay has not been shown;
- (3) after the employee has been given notice and a reasonable opportunity to make required revisions, remains so unclear that the nature of the grievance or the relief requested cannot reasonably be determined;
- (4) is the same or substantially the same as a pending grievance filed by the same employee; or
- (5) concerns a working condition that has already been resolved through the grievance process within the preceding 12 months.

If the state Human Resources Director dismisses a grievance under this section, the employee will be provided written notice of the reason for the dismissal. The decision of the state Human Resources Director to dismiss a grievance is final and cannot be appealed.

**Follow-up on Grievance Resolutions.**

When the granted relief indicates that certain actions will occur, the decision authority must provide the state Human Resources Director with documentation that the actions did take place. As a general rule, the documentation should be provided to the state Human Resources Director within 30 calendar days of the grievance decision date.

**Retaliation Prohibited.**

TMD strictly prohibits retaliation against any person for:

- (1) filing a complaint through the employee grievance system or through an outside agency; or
- (2) participating as a witness in any complaint or complaint investigation.

This prohibition includes harassment, intimidation, or coercion of any person because of involvement in a grievance or complaint, whether as a party, representative, or witness.

## CHAPTER VII

### PROGRAM SPECIFIC POLICIES

#### STATE EMPLOYEES ASSIGNED TO FIRE PROTECTION ACTIVITIES

##### **Purpose**

To outline the exceptions for full-time, classified state employees assigned to the Aircraft Fire/Crash Rescue Branch. These fire protection activities are performed over a work period of 28 days in order to facilitate 24-hour duty shifts. Circumstances for fire protection activities not addressed in this chapter shall be in conformity with department policies and state and federal laws.

##### **Schedule**

Personnel are regularly scheduled to remain at or within the confines of their designated place of duty for periods of 24 hours. The normal work schedule consists of a 24 hour duty period followed by a 48 hour off duty period. This schedule is facilitated by utilizing three shifts, thereby providing continuous fire protection coverage. For scheduling purposes, employees are assigned, at the local level, to one of the three shifts. However, at the discretion of the department director, employees may be temporarily or permanently reassigned to different shifts as necessary and/or in the best interests of the department. Whenever possible an employee should be afforded reasonable notice of not less than two weeks regarding a reassignment whenever possible.

Every effort, within state and federal FLSA guidelines and reasonable fairness to the employee, will be afforded to prevent "scheduled overtime". The work schedule described above will be routinely modified as follows in order to maintain an "activity hours" ratio of 212-216 hours in a 28 day "work period". The schedule modifications, also known as Kelly Days, will provide an additional 24 hour off duty period at scheduled intervals. These schedule modifications will be used for the sole purpose of preventing "scheduled overtime" in excess of the 4 hours accrued each work period as a direct result of the 24/48 schedule and shall in no case be construed as time off due to an employee or used to reduce the "working hours" of an employee who has worked approved overtime during the course of a 28 day "work period".

Affected personnel will be assigned, at the direction of the respective supervisor, a Kelly Day (additional 24 hour off duty period) during the course of every third 28 day "work period". This work period will be identified as any 28 day "work period" which due to the normal work schedule, employees are scheduled to work 10 shifts.

Alternative duty schedules and precise times for each tour of duty shall be developed at the local level, by the department director, to facilitate mission requirements within the limits of state and federal FLSA.

**Substitution**

State employees assigned to the Aircraft Crash/Fire Rescue Branch may agree, solely at their own option and with approval of their respective supervisors, to substitute for one another during scheduled work hours in performance of work in the same capacity. Employees are solely responsible for the loss of holiday and/or comp time, or where annual leave converts to sick leave, which may result from excessive use of substitution. In no case will personnel with insufficient leave, FLSA or compensatory time balances to otherwise take off, be allowed to substitute. When one employee substitutes for another, each employee will be credited as if he/she had worked his/her normal work schedule for that shift. A request specifying who will substitute and when, shall be completed and approved prior to the substitutions taking place. Substitutions may be approved or disapproved, with reasonable fairness to the employees, at the supervisor's discretion. (Reference: 29 CFR Part 553 Subpart A - 553.31 Substitution)

**Early Relief**

State employees assigned to the Aircraft Crash/Fire Rescue Branch may agree, solely at their own option and with approval of the supervisor on duty, to provide shift relief to one another, in performance of work in the same capacity, prior to the scheduled end of the duty shift. In so doing, each employee will be credited as if he/she had worked his/her normal work schedule for that shift. Early relief may be approved or disapproved, with reasonable fairness to the employees, at the supervisor's discretion. (Reference: 29 CFR Part 553 Subpart C - 553.225 early relief)

**Emergency Situations**

All state employees assigned to fire protection activities are subject to be summoned to duty at any time in the event of an emergency situation, as determined by the department director or his/her designee. If required to report to duty, employees shall be compensated for actual "work hours".

All state employees assigned to fire protection activities are subject to be "on call". Specific procedures for "on call" assignments will be developed at local level, by the department director, to facilitate mission requirements, within the limits of state and federal FLSA. In no case shall being on call constitute "working hours" or "activity hours". If required to report to duty, employees shall be compensated for actual "work hours".

Due to the necessity of employees being "on call", all employees hired after approval of this chapter shall be required to reside within a 100 mile radius and able to report promptly to Ellington JRB, Houston, Texas.

### **Monthly Time Reports**

The following sections include definitions that will provide a brief overview of monthly time reports.

### **Work Period**

The normal work period is established as 28 days, 212 hours. This work period may or may not coincide with the duty cycle or pay period. The duration, beginning and ending of the work period may be changed, with approval of the state Human Resources Director, provided that the change is intended to be permanent and is not designed to evade the overtime compensation requirements of state and federal FLSA.

### **Activity Hours**

“Activity Hours” are the combination of all working and leave hours for the pay period. Each 28 day pay period will have a minimum of 212 “activity hours” unless an alternative work schedule is approved by the state Human Resources Director.

### **Overtime**

Overtime may be authorized to support minimum manning requirements due to emergencies, training, vacations, sick leave, etc. or as necessary in support of the mission. In no case shall overtime be purposely scheduled in advance.

### **FLSA**

An employee who is required to work in excess of 212 hours in a 28 day work period is entitled to compensation for the excess hours by one of the following methods:

- The department allowing (or requiring) the employee to take FLSA compensatory time off at the rate of 1-1/2 hours off for each hour of overtime; or
- At the discretion of the department director, in cases where granting FLSA compensatory time off.

is impractical, the employee may receive pay for the overtime at the rate equal to 1-1/2 times the employee’s regular rate of pay.

Supervisors will periodically review employee’s FLSA balances to determine if granting FLSA compensatory time off is practical with respect to training, schools, annual leave, military deployments, and other pertinent factors. If granting FLSA compensatory time off is impractical, the department director may forward to NGTX-RMH, on a quarterly basis, a written request to pay FLSA balances. Requests must include employees’ names, titles, number of FLSA hours requested for payment, and copies of monthly time reports for the work periods during which the FLSA was earned. FLSA disbursements, once approved by NGTX-RMH, will be made as soon as practicable, considering funding availability and regular payroll disbursements.



Hours accredited towards FLSA must be actual “working hours” and cannot include any other type of “activity hours”. Any paid leave or holidays taken are not counted as hours worked in determining overtime hours.

Each employee engaged in fire protection activities may not accumulate more than 480 hours of FLSA, pursuant to 29 U.S.C. Sec. 207(o)(3)(A). Employees must be paid for overtime worked in excess of the limits on accumulation, at the rate equal to 1-1/2 times the employee’s regular rate of pay.

### **State Compensatory Time**

State compensatory time is equal to one hour for each “activity hour” in excess of 212 hours in a 28-day work period. State compensatory time must be taken during the 12-month period following the end of the work period which it was earned. State Compensatory time may not be carried forward past the end of the 12-month period. Supervisors will periodically review employee’s state compensatory time balances to determine if granting compensatory time off is practical with respect to mission critical functions.

In situations where the employee has not “worked” more than 212 hours in a 28 day work period but the total of “activity hours” exceed 212 hours, the employee shall be allowed equivalent state compensatory time off for the excess hours.

In situations where the employee has “worked” more than 212 hours in a 28 day work period and the total of “activity hours” exceed 212 hours, after subtracting FLSA overtime hours worked, the employee shall be allowed equivalent state compensatory time off for such excess hours.

Employees must use the CAPPS timesheet to record time and leave activity:

- The employee and supervisor will work with the state Leave Accountant to ensure the appropriate regular work schedule is set up for the employee in CAPPS. Schedule changes should occur at the beginning of the 28 day work period, if possible.
- **Employees will enter time worked AND leave taken on the CAPPS timesheet as it occurs.** An employee will enter the exact number of hours he/she worked and took off. Supervisors will review and take the appropriate action on the CAPPS timesheet at least weekly.
- State Human Resources will coordinate with the State Payroll Office to compute FLSA time and state compensatory time. The manager will verify leave balances and employees will have access to leave balances in CAPPS.

**Holidays**

At the first of the state fiscal year, the state Human Resources will issue a holiday schedule for that year. Each employee will accrue 8 hours of holiday compensatory time for each scheduled holiday. An employee, who would otherwise be scheduled to work, takes off on a holiday, will be charged 8 hours of holiday time prior to being charged leave from any other balances.

**Performance Appraisal Schedule**

State employees assigned to fire protection activities shall have their first probationary evaluation at 12 months. Periodic informal reviews may be made by the supervisors to assist employees with respect to their performance shall have their corrective actions should be documented and taken in shorter intervals if a problem arises. State employees assigned to fire protection activities will serve a probationary period for the first twelve continuous months of their employment. Regular status of a probationary employee will begin the first day following satisfactory completion of the probationary period. Probationary employees may be terminated at any time during the probationary period. An employee released from employment during the probationary period will not have the right of appeal, except in cases where the employee claims he or she was terminated for an illegal reason.

**PHYSICAL AGILITY TESTING – SECURITY OFFICER – STATE EMPLOYEES ASSIGNED TO  
ACTIVITIES**

The TMD requires that all security officers successfully complete an initial, and thereafter, annual Physical Agility Test (PAT) as a condition of their employment in accordance with the Master Cooperative Agreement, Security Cooperative Agreement Appendices 3 & 23, section 2308 (a), item 3.

State employees must comply with the Adjutant General's Policy on Physical Agility Testing. A copy of this policy is posted at <https://tmd.texas.gov/texas-military-department-policies-and-regulations>.

**APPOINTMENT OF LICENSED ARMED SECURITY OFFICERS**

Security officers employed by the Texas Military Department will not carry a weapon while performing their duties on premises under the control of the Adjutant General, until granted written authority to be armed. Examples of weapons are handguns, shotguns, rifles, mace, knife, nightstick or club.

**References**

Section 437.053(8), Texas Government Code, empowers the Adjutant General of Texas to employ and arm persons Security Officers licensed under Title 10, Occupations Code.

**Procedures**

The following criteria must be met prior to being given the authority to be armed?

1. The security officer must be employed by the Texas Military Department and must be properly licensed.
2. Upon receipt of the appropriate license, the unit of assignment must request written authority to arm. The TMD will provide a Memorandum stating that the security officer is appointed as a Security Officer for the Department and will specify specific weapon(s) the individual is authorized to carry. No personal weapons will be carried by Armed Security Officers of the Department, unless authorized in writing.

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# APPENDICES



TEXAS MILITARY DEPARTMENT  
POST OFFICE BOX 5218  
AUSTIN, TX 78763-5218  
(512) 782-5001

Department Name: \_\_\_\_\_

Date: \_\_\_\_\_

MEMORANDUM TO (Supervisor): \_\_\_\_\_

FROM (Employee): \_\_\_\_\_

SUBJECT: **Work schedule**

1. My work schedule is:

a. Arrival Time: \_\_\_\_\_ AM PM

b. Departure Time: \_\_\_\_\_ AM PM

c. Workdays: Sunday Monday Tuesday Wednesday Thursday Friday Saturday  
Comments:

\_\_\_\_\_

\_\_\_\_\_

d. Day Off: \_\_\_\_\_  
\_\_\_\_\_

e. Lunch Period: \_\_\_\_\_ AM to \_\_\_\_\_ AM  
PM PM

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Immediate Supervisor's Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Next Level Supervisor Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_

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**Texas Military Department**  
**Request for Reasonable Accommodation**  
**(To be completed by Employee)**

**PRIVACY DISCLOSURE:** The information on this form will be used to process a request for reasonable accommodation and will be filed separate from personnel files for the duration of employment.

Employee Name:	Date:
Position:	Contact Number:
Supervisor's Name:	Contact Number:
Directorate/Branch:	

Date Accommodation(s) needed: \_\_\_\_Beginning      \_\_\_\_Ending

<p>1. Do you have a physical or mental impairment that substantially limits one or more major life activities?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes; If so, please provide the Medical Inquiry form to your health care provider and return to the ADA Coordinator by: _____</p>
<p>2. Does your condition limit your ability to perform any of the essential functions of your job?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes; If so, please describe with estimated length of time:</p>
<p>3. Does your condition limit your access to any employment benefits (such as training opportunities, use of leave, or access to facilities or employee programs)?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes; If so, describe and be as specific as possible:</p>
<p>4. List any specific accommodation(s) you are requesting and briefly describe how the accommodation(s) will assist you in performing the essential functions of your job:</p>



5. Will you be able to perform all the essential functions of your job if you receive the requested accommodation?

Yes

No; If so, please list those functions that you are unable to perform.

Provide any information or suggestions on how the requested accommodation can be provided. If known, please include the resource name, address and telephone number. If requesting specific equipment, please include make, model number, vendor and the approximate cost.

Please provide any additional information that might be useful in processing your accommodation.

Employee's Signature: \_\_\_\_\_

Supervisor Recommendation:                       Approval                       Disapproval

Comment: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Supervisor Name (Printed)                      Signature                      Date

ADA Coordinator Recommendation:                       Approval                       Disapproval

Accommodation(s) provided: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
ADA Coordinator Name (Printed)                      Signature                      Date

**Texas Military Department  
 ADA Accommodation-Medical Inquiry Form  
 (To be completed by Health Care Provider)**

The Texas Military Department (TMD) requires an employee requesting an **ADA Accommodation(s)** due to an **illness/injury/or temporary disability** to submit a medical inquiry form to be completed by the treating physician or health care provider to support the request.

<b>Employee Name:</b>	<b>Date:</b>
-----------------------	--------------

**ADA/ADAAA Accommodation forms** are used to comply with the Americans with Disabilities Act, as amended, by providing reasonable accommodation(s), upon request, for a qualified individual with a disability. Reasonable accommodation is any change to a program, service, facility, workplace or job requirement that enables an individual with a disability to participate in the performance of a job, services, program or activities provided or made available by this department. Reasonable accommodation will be provided upon approval from the ADA Coordinator, unless a request impose an undue hardship on TMD.

**SECTION I: For Completion by the Health Care Provider:**

Printed Name of Health Care Provider/Facility:		Type of Practice/Medical Specialty:	
Business Address	City	State	Zip
Telephone Number:		Fax Number:	
Signature of Health Care Provider		Date:	

<b>A. Disability Assessment</b>
Does the employee have a physical or mental impairment?  <input type="checkbox"/> Yes <input type="checkbox"/> No  If yes, what is the impairment? Is the impairment permanent?  <input type="checkbox"/> Yes <input type="checkbox"/> No  If no, what is the approximate duration of the impairment?
Does the impairment substantially limit a major life activity?  <input type="checkbox"/> Yes <input type="checkbox"/> No

If yes, please check the appropriate substantially impaired major life activity.

<input type="checkbox"/> Caring for oneself	<input type="checkbox"/> Standing	<input type="checkbox"/> Concentrating
<input type="checkbox"/> Performing manual tasks	<input type="checkbox"/> Lifting	<input type="checkbox"/> Thinking
<input type="checkbox"/> Seeing	<input type="checkbox"/> Bending	<input type="checkbox"/> Communicating
<input type="checkbox"/> Hearing	<input type="checkbox"/> Speaking	<input type="checkbox"/> Working
<input type="checkbox"/> Eating	<input type="checkbox"/> Breathing	<input type="checkbox"/> Immune system functions
<input type="checkbox"/> Sleeping	<input type="checkbox"/> Learning	<input type="checkbox"/> Normal cell growth
<input type="checkbox"/> Walking	<input type="checkbox"/> Reading	<input type="checkbox"/> Digestive
<input type="checkbox"/> Bowel	<input type="checkbox"/> Bladder	<input type="checkbox"/> Neurological
<input type="checkbox"/> Brain	<input type="checkbox"/> Respiratory	<input type="checkbox"/> Circulatory
<input type="checkbox"/> Endocrine	<input type="checkbox"/> Reproductive	<input type="checkbox"/> Other*

\*If "Other", please describe:

**B. Accommodation Assessment**

Using the job description provided by the employer, please describe the limitation(s) that interfere(s) with the employee's ability to perform the essential functions of the job.

What essential job function(s) does the employee have trouble performing due to the limitations?

Will the employee be disabled for a single continuous period of time due to this medical condition, including any time for treatment and recovery?

- Yes
- No

If so, estimate the beginning and ending dates for the period of incapacity:

\_\_\_\_\_ Beginning                      \_\_\_\_\_ Ending

**C. Health Care Provider Recommendations**

What are your recommendations for enabling the employee to perform the essential job functions? How will these recommendations enable the employee to perform those duties?

Does the employee receive treatment for this condition under another health care provider?

Yes

No

If yes, provide name(s) of health care provider and specialization.

In order for the employer to determine the employee's eligibility for accommodation(s), describe any relevant medical facts related to the condition for which the employee seeks accommodation or leave such as, symptoms, diagnosis, or any regimen of continuing treatment.

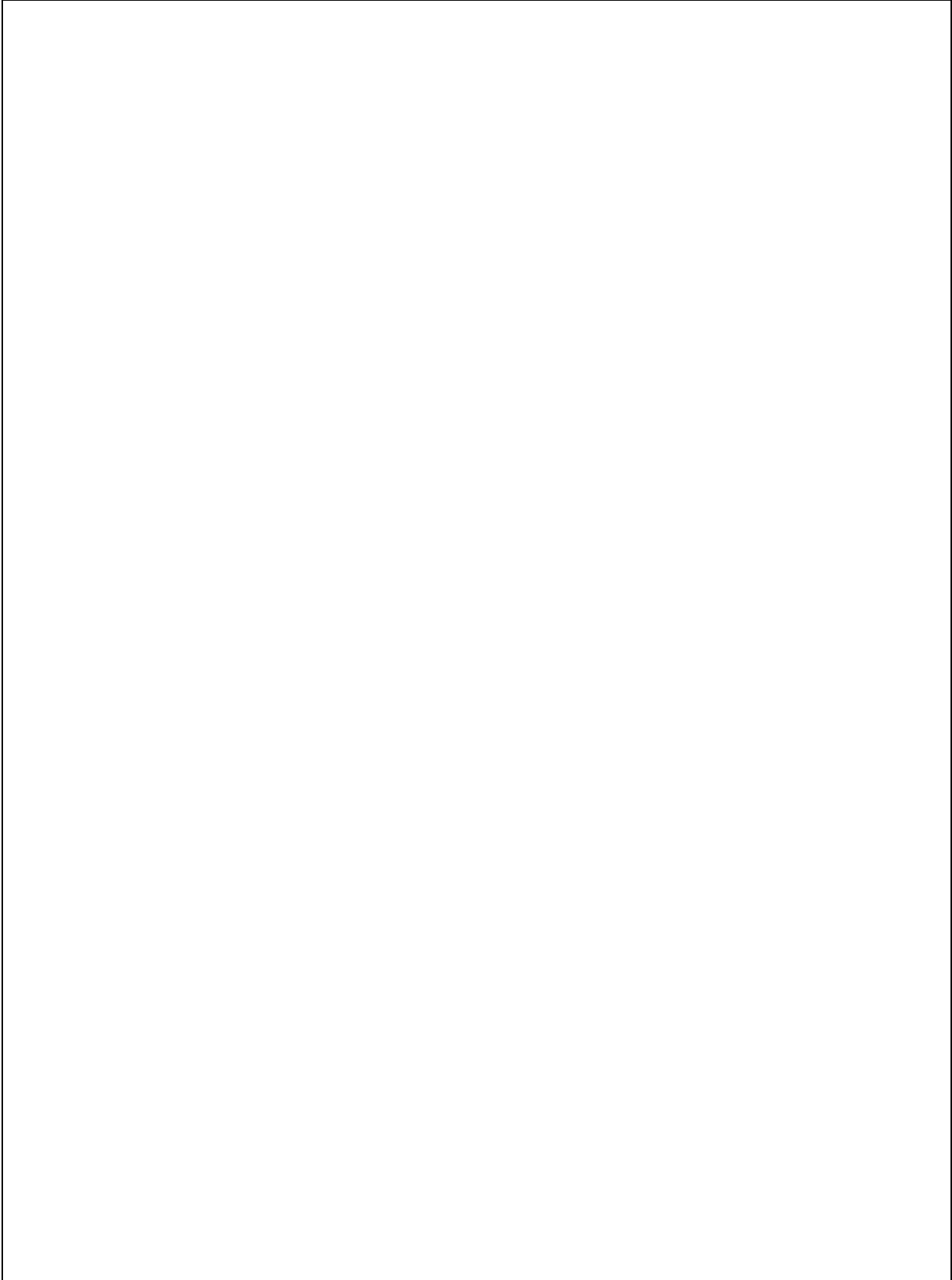
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# Texas Military Department

## State Employee Complaint Form

1. Name (Last, First, Middle Initial):	2. Program/Directorate:
3. Preferred Contact Telephone:	4. Email Address: Preferred:
5. Have you asked your immediate supervisor or chain of command for assistance with the issue? Y /N	6. Mailing Address: Preferred:
7. Who or what is your complaint concerning? <input type="checkbox"/> Manager/Supervisor <input type="checkbox"/> Facility <input type="checkbox"/> Another Employee <input type="checkbox"/> Other _____	
8. Names and/or positions of witnesses (or others who have knowledge of your allegations):	
9. Description of allegations/issues (continue on the back or attach pages as necessary):	
10. Specific Action Requested (desired outcome):	
Signature of Complainant:	Date:

Texas Military Department  
State Employee Complaint Form (continued)

A large, empty rectangular box with a thin black border, occupying most of the page below the header. It is intended for the user to write the details of the complaint.

STATE POLICIES GUIDE  
TEXAS MILITARY DEPARTMENT

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**MERIT SALARY INCREASES AND ONE-TIME MERIT PAYMENTS POLICY**

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This policy focuses on merit-based salary increases and one-time merit payments for employees in state classified positions. The policy limits the time to submit requests in accordance with adopted procedures to once a year.

Unless otherwise mandated by the Texas Legislature, merit pay increases and one-time merit payments will be based on meritorious job performance and will not be awarded on an "across-the-board" or "cost-of-living" basis. In accordance with statutory requirements, meritorious job performance is defined as job performance and productivity that are consistently above the normal expected levels.

This policy shall be administered in a fair and equitable manner in accordance with the procedures and guidelines implemented by State Human Resources through the Executive Director. An important part of base pay management is the maintenance/monitoring of an employee's base salary and progression through the salary range. Adopted procedures should encourage this type of review and analysis. Exceptions to adopted procedures require advance approval by the Adjutant General or Executive Director.

This policy supersedes all prior policy statements and other guidance on the award of merit pay increases and one-time merit payments, and it shall remain in effect until a new or revised policy is adopted.

Procedures and guidelines implemented may be changed as necessary for efficient and effective administration without adoption of a new or revised policy.

  
JOHN F. NICHOLS  
Major General, TXANG  
Adjutant General

DISTRIBUTION:



STATE POLICIES GUIDE  
TEXAS MILITARY DEPARTMENT

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MERIT SALARY INCREASES  
AND  
ONE-TIME MERIT PAYMENTS PROCEDURES

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1. MERIT SALARY INCREASES

A merit salary increase may be granted to an eligible employee for meritorious job performance. Meritorious job performance is job performance and productivity that are consistently above the normal expected levels. There are two types of merit rewards.

1.1 Merit Salary Increase

A merit raise that increases the eligible employee's base salary.

1.2 One-Time Merit Payment

A single, lump-sum merit payment that does not change the eligible employee's base salary.

2. GENERAL GUIDELINES

2.1 Funds Must Be Available

Before any merit salary increase or one-time merit payment is given, the requesting supervisor/manager shall confirm that there is money available in the program's budget for the requested action. For merit salary increases, this means that permanent funding is available (i.e., the program's budget can handle the increase in the employee's base salary on a lasting or continued basis).

2.2 Merit Actions Must Meet Statutory Requirements

Statute requires that employees who receive merit rewards must be consistent high performers. This means that not only do they perform their expected job duties well, but that their performance and productivity are consistently above normal expectations.

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## MERIT SALARY INCREASES AND ONE-TIME MERIT PAYMENTS PROCEDURES

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### 2.3 Merit Actions May Be Requested Annually

Generally, merit salary increases and one-time merit payments may be submitted annually in July.

#### EXCEPTIONS:

A. A merit reward may be given at other times if the reason for the exception is detailed in writing and approved in advance by the Executive Director or Adjutant General.

B. A one-time merit payment for outstanding performance during an emergency or other unusual situation may be given at any time subject to the availability of funds.

1. A request made under this exception must include a description of the emergency or other situation and a detailed justification statement.

2. The Adjutant General or the Executive Director must document the natural disaster or other extraordinary circumstance.

### 3. ELIGIBILITY/CRITERIA FOR AWARD OF MERIT ACTIONS

3.1 A classified employee must have completed six months of continuous service with the Texas Military Department before any merit award.

3.2 At least six months must have passed since the last salary action (e.g., promotion, reclassification with salary change, one-time merit payment, emergency one-time merit payment, etc.) for the employee.

3.3 An employee's job performance and productivity must be consistently above the normal or expected levels. The performance evaluation form must show at least one rating of 4 (Exceeds Job Expectations) and must not include a 1 (Unsatisfactory) or 2 (Needs Improvement) rating.

3.4 A current, written performance appraisal conducted within the last 12 months must be on file in Human Resources.

3.5 The employee must be on State Salary Classification Schedule A or B for a merit salary increase.

## MERIT SALARY INCREASES AND ONE-TIME MERIT PAYMENTS PROCEDURES

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A. *For Schedule A employees*, a merit salary increase must be at least \$30 per month. The increase is limited to a salary at or below the maximum of the employee's salary group.

B. *For Schedule B employees*, there is no specified minimum for a merit salary increase. However, the increase cannot cause the employee's salary to exceed the maximum of the employee's salary group.

- 3.6 Employees on any State Salary Classification Schedule are eligible for one-time merit payments. There is no statutory limitation to a certain percentage or amount for a one-time merit payment (including an emergency one-time payment). The award of one-time merit payments is subject to available funds in the agency budget.
- 3.7 The Adjutant General's or Executive Director's approval is required prior to the award of any merit salary increase or one-time merit payment of more than 10%.
- 3.8 Employees on temporary assignment or currently under a disciplinary reduction are not eligible to receive a merit increase or one-time merit payment.
- 3.9 Employees who have been on leave without pay for a full calendar month cannot count that time toward their six continuous months of service. An exception is military leave without pay, which would not affect an employee's merit eligibility.

#### 4. OTHER EVALUATION FACTORS FOR MERIT ACTIONS

Beyond the statutory requirements, factors that should be considered when evaluating the award, type and amount of any merit salary increase or one-merit payment, include, but are not limited to:

- 4.1 The total funds available (what amount is available for one-time payments and what annualized amount is available for a regular merit salary increase).
- 4.2 Recommendation of the employee's immediate supervisor.
- 4.3 Whether the employee is at or near the maximum rate for their salary group.

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**MERIT SALARY INCREASES AND ONE-TIME MERIT PAYMENTS PROCEDURES**

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- 4.4 The employee's current salary level as compared to other comparable positions within the program or agency (e.g., a larger percentage increase may be appropriate if the employee's salary lags behind those in comparable positions; or a one-time merit payment may be appropriate if an employee's salary is substantially above other high performers performing the same or similar duties, or is at the maximum of the pay range).
- 4.5 Whether the employee's current salary is below the salary range midpoint.
- 4.6 The time period that has lapsed since the employee's last salary action and the nature of that action (e.g., a merit salary increase or a one-time merit payment).
- 4.7 The total salary adjustments for the employee in the past 12 months (including merits, promotions, equity adjustments, etc.).
- 4.8 Whether the employee has been eligible for a merit salary increase or one-time merit payment for more than one review period but has not received an award due to budget restrictions.
- 4.9 Whether the employee's job requires specialized training and would be hard to replace (e.g., a programmer for a custom computer program).
- 4.10 Whether merit-based compensation can be applied as a meaningful retention strategy for high performers.
- 4.11 Performance distribution ratings within departments are generally expected to fall within the following approximate percentages:

*33% Consistently Exceeds Expectations*

*56% Meets Expectations*

*11% Developing (Gaining Proficiency) or Needs Improvement*

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# SICK LEAVE DONATION REQUEST FORM

(State Employee)

To request a sick leave donation, complete Part A below and submit this form to the the Leave Accountant.

Note: To be eligible to receive sick leave donations, the requester must have exhausted all sick leave and have a combined balance of all other accrued leave below 40 hours.

## Part A - To be completed by the Requester

Requester Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Department/Location: \_\_\_\_\_ Email: \_\_\_\_\_

Position: \_\_\_\_\_ Supervisor: \_\_\_\_\_

Hours Requested: \_\_\_\_\_  
(number)

I understand that I may not provide any compensation, gift or benefit in exchange for a sick leavedonation.  
I also understand that donated sick leave is taxable to me when it is used.

Recipient Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Part B - To be completed by the Leave Accountant

Sick Leave (including any sick leave pool hours) exhausted:    Yes    No	Comments: _____ _____ _____ _____
Annual Leave: _____	
Compensation Time: _____	
Combined leave balance below 40 hours:    Yes    No	
Request Accepted    Request Denied	

Leave Accountant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Part C - To be completed by the HR Leave Specialist

Request received by HR Leave Specialist _____	Comments: _____ _____ _____ _____
Request for donations published: _____	
Donations Received:    Yes    No	
<b><u>Name</u></b> <b><u>Hours</u></b> <b><u>Date</u></b>	
_____                      _____                      _____	

HR Leave Specialist Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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# SICK LEAVE DONOR FORM

(State Employee)

To donate sick leave to another state employee, complete Part A below and submit this form to the Human Resources (HR) Leave Specialist.

## Part A - To be completed by the Donor

Donor Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Department/Location: \_\_\_\_\_ Email: \_\_\_\_\_

Position: \_\_\_\_\_ Supervisor: \_\_\_\_\_

I hereby voluntarily donate \_\_\_\_\_ hours of my available sick leave to \_\_\_\_\_.  
(number) (name of employee to receive donation)

I understand that the hours of sick leave I donate will be considered used, and once transferred cannot be restored.

Donor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Part B - To be completed by the HR Leave Specialist

<p>Donor is a State Employee:    Yes    No</p> <p>Donation Request Pending:    Yes    No</p> <p>Donation amount to be transferred: _____ (Note the reason if less than the amount voluntarily donated)</p>	<p>Comments:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
--	--

HR Leave Specialist Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## Part C - To be completed by the Leave Accountant

USPS Entries and Notices		Comments:
<u>Entry</u>	<u>Date</u>	
Removed donated sick leave from donor:	_____	_____
Notified Donor:	_____	_____
Donated leave transferred to requestor's sick leave balance:	_____	_____
Notified requester of availability:	_____	_____

Leave Accountant Signature: \_\_\_\_\_ Date: \_\_\_\_\_



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**REQUEST FOR SICK LEAVE POOL**

**Requestor's Name & Title:** \_\_\_\_\_  
(Please Print)

**Date:** \_\_\_\_\_

**Employee Name:** \_\_\_\_\_  
**SSN#:** \_\_\_\_\_  
**Job Title:** \_\_\_\_\_  
**Facility/Section:** \_\_\_\_\_  
(Please Print)

---

I am requesting sick leave pool time in the amount of ( \_\_\_\_\_ ) hours to be transferred to my sick leave balance effective \_\_\_\_\_, 2016. My total accrued leave hours available at the onset of the "catastrophic illness or injury" was \_\_\_\_\_ Annual, \_\_\_\_\_, Sick, \_\_\_\_\_, Holiday Comp, \_\_\_\_\_, State comp, and \_\_\_\_\_, FLSA Overtime.

The use of all leave entitlements will be exhausted effective \_\_\_\_\_, 2016. I understand that the Sick Leave Pool Policy requires any unused leave be returned to the Sick Leave Pool.

This request is based upon the "Catastrophic Illness/Injury" described below:

Name of individual with the illness or injury:

Relationship to Employee:

Description of Illness/Injury:

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

Supervisor Recommendation: \_\_\_\_\_ Approval \_\_\_\_\_ Disapproval

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

Benefits Coordinator Recommendation: \_\_\_\_\_ Approval \_\_\_\_\_ Disapproval

\_\_\_\_\_  
Benefits Coordinator Signature

**Sick Leave Pool Administrator**

**Approved** \_\_\_\_\_

**Disapproved** \_\_\_\_\_

**(State Reason)**

\_\_\_\_\_  
**Human Resources Director**

**Date:** \_\_\_\_\_

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## Return to Work Procedures for State Employees

**Definitions** – The following definitions apply to these procedures:

1. **Serious Health Condition** – An illness, injury, impairment or physical or mental conditions that involves:

- Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity; or
- Continuing treatment by a health care provider, including a period of incapacity.

2. **FMLA** – Federal leave entitlement of up to 12 weeks of unpaid leave when an eligible employee is unable to work because of a serious health condition. The absence from work must be a period of incapacity of more than three consecutive calendar days. The leave is normally continuous, but may be taken intermittently or on a reduced leave schedule

3. **Lost Time** – Time spent away from work at the direction of the treating doctor as a result of a compensable injury sustained in the course and scope of employment. The term does not include time worked in a temporary assignment.

4. **Full Duty** – Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and non-essential functions of the employee's regular job.

5. **Temporary Assignment** – Performance of temporary job assignment that is intended to return an injured employee to work at less than his or her full duties when a compensable injury or serious medical condition prevents the employee from working full duty. Two types of temporary assignments are modified duty and alternate duty.

6. **Modified Duty** - Performance of all of the essential functions, but only a portion of the non-essential functions and tasks of the regular job duties for which the employee is employed. Modified duty allows the employee to return to current employment in his or her regular job, and perform those duties and tasks that are within the capabilities of the employee, given the restrictions to duty imposed by the treating physician.

Modified duty is a temporary arrangement until the injured employee can resume full duty. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, modified duty may become a permanent arrangement as a reasonable accommodation, provided the accommodation does not create an undue hardship on the agency.

7. **Alternate Duty** - Performance of the essential functions of a job or position other than the position for which the employee is employed. Alternate duty allows the employee to temporarily perform other duties and tasks that are within the restrictions to

duty imposed by the treating doctor. Such alternate duty may be physically located in the same facility or in some other facility. Alternate duty is a temporary arrangement until the injured employee can resume full activities of his/her regular job. If the employee is a qualified individual with a disability as defined under the Americans with Disabilities Act, alternate duty may become a permanent arrangement as a reasonable accommodation, provided the accommodation does not create an undue hardship on the agency.

**Prohibited Actions** - This return to work policy and procedure shall not be applied to any situation or circumstance in a manner that discriminates on the basis of race, color, sex, national origin, religion or disability.

It is a violation of the return to work policy, procedures, and state or federal law for any employee, supervisor or manager of this agency to:

1. Discharge or in any other manner discriminate against an employee of this agency because the employee:

- files a workers' compensation claim in good faith;
- hires a lawyer to represent the employee in a workers' compensation claim;
- institutes or causes to be instituted in good faith a proceeding under the Texas Workers' Compensation Act; or
- testifies or is about to testify in a proceeding under the Texas Workers' Compensation Act.

2. Discharge or in any other manner discriminate against an employee of this agency because the employee:

- opposes any practice made unlawful by the FMLA or ADA; or
- has filed any charge, or has instituted or caused to be instituted any proceeding under or related to the FMLA;
- has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the FMLA; or
- has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the FMLA.

3. Interfere with, restrain or deny the exercise of or the attempt to exercise, any right provided by the Family Medical Leave Act (FMLA);

4. Discriminate on the basis of disability against an employee of this agency who is a qualified individual with a disability under the Americans with Disabilities Act (ADA) in regard to:

- job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- leaves of absence, sick leave, or any other leave;

- upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- rates of pay or any other form of compensation, changes in compensation, and fringe benefits available;
- selection and financial support for training; or
- social and recreational activities.

5. Limit, segregate or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

6. Require a medical examination of an employee who is disabled as defined under the ADA unless the medical examination is job related and consistent with business necessity.

7. Make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

**Job Descriptions of All Positions** - All supervisors and managers are responsible for identifying, documenting, and maintaining the essential and non-essential functions in a job description for all positions for which they are responsible. The physical requirements of the position should be included in all job descriptions as either essential or non-essential functions. All job descriptions should be reviewed at least annually, and revised and submitted to State Human Resources Director. The State Human Resources Director will designate the department's return to work coordinator. The return to work coordinator is responsible for coordinating all activities associated with the return to work program, unless specific duties are otherwise assigned to another person or position.

**Education and Training** - The return to work coordinator will develop, maintain, and provide an appropriate training module for inclusion in orientation training for new employees. The return to work coordinator will also develop, maintain, and provide an appropriate refresher training module for presentation to employees on an as needed basis.

**Employee Participation in the Return to Work Program** - In order for an employee of this agency to be eligible to participate in this return to work program, the employee must have:

1. Sustained a compensable injury as defined in the Texas Workers' Compensation Act that results in lost time away from work;
2. A serious health condition as defined by the Family and Medical Leave Act; and/or
3. A disability as defined by the Americans with Disabilities Act.

An employee who meets the above criteria shall be encouraged to participate in the program. However, participation by the employee in the program is voluntary and the employee cannot be forced to participate.

**Notification of Injury or Illness** - An employee who sustains an injury or illness either on or off the job is expected to notify his/her supervisor, or a person in a management position, that an injury or serious health condition exists. Such notification should occur at the earliest possible time after occurrence of injury or knowledge that a serious health condition exists. Such notification should ideally occur within 24 hours of the injury or when the serious health condition first manifests itself. In order to receive workers' compensation benefits, an employee must give notice of injury within 30 days.

**Authorization for Leave and Lost Time** - An employee who must miss work due to a compensable injury and/or a serious health condition must be certified or authorized by a health care provider to be off work. It is the employee's responsibility to obtain such certification from the health care provider and to return the certification to his/her supervisor in a timely manner. A "Certification of Physician or Practitioner" form is attached to this policy for this purpose. If an employee is disabled as defined under the ADA, the request must be job-related, consistent with business necessity and cannot inquire as to the nature or severity of the injury.

In general, the treating health care provider's certification should be provided by the employee to the supervisor according to the following timelines:

1. When the employee knows in advance that FMLA leave is necessary, the certification form should be provided to the supervisor a minimum of three workdays prior to the time leave will commence.

2. When the employee cannot know in advance that leave is necessary, the certification form should be provided to the supervisor within three calendar days after the initial visit to the health care provider.

The employee's supervisor will provide a copy of the employee's position description to the employee to take to the health care provider to assist in determining whether the employee can perform the essential job functions.

Accrued sick leave before receiving workers' compensation temporary income benefits. However, if the employee elects to use sick leave, all accrued sick leave must be exhausted before the employee is entitled to workers' compensation temporary income benefits

**Periodic Status Reports** - If an employee is certified by a health care provider to be off work, the employee is required to submit periodic status reports to his/her supervisor stating the employee's status and intention to return to work. Such status reports are required at the time of each scheduled visit with the treating health care provider and are due immediately following the visit. The status report should be provided to the

supervisor within 24 hours of the scheduled visit or, if a weekend or holiday is involved, before close of business on the next scheduled workday.

If an employee has returned to work in a temporary assignment, and follow-up health care provider appointments are necessary, the employee will schedule the appointments to minimize time away from the job. Time away from work for these health care provider appointments shall be counted against FMLA leave, if designated by the department.

**Communications with the Employee** - At the time of first communication with the employee, the return to work coordinator shall provide information to the employee that contains the following, as appropriate:

1. The agency's return to work policy and procedures, and appropriate forms.
2. If a job-related injury or occupational disease occurs:
  - Notification that the State of Texas provides workers' compensation benefits to employees who sustain compensable job-related injuries and/or occupational diseases;
  - How medical expenses and income payments are made;
  - How employee health benefits are continued;
  - The name, location, and telephone number of the local Texas Workers' Compensation Commission's (TWCC) field office and the name of the TWCC ombudsman at that office. The notice should state that the employee has a right to information and assistance from the TWCC ombudsman with his/her claim; and
  - The rights available to the employee under the Texas Workers' Compensation Act
3. For FMLA leave:
  - Information regarding the employee's FMLA leave entitlement;
  - How employee health benefits are continued; and
  - Required certifications from the health care provider.

The return to work coordinator is responsible for maintaining regular, weekly communications with the employee. The purposes of these communications are to: encourage the employee during recuperation from the injury; communicate the value of the employee to the agency; encourage return to work at the earliest possible date; and if the employee is on lost time for a workers' compensation claim, offer assistance to the employee if needed to attend health care provider visits.

**Communications with the State Office of Risk Management and/or the Workers' Compensation Division.** - The claims coordinator is responsible for timely submission to the Workers' Compensation Division, Office of the Attorney General and/or State Office of Risk Management, all required reports and other important documents in the agency's possession regarding a workers' compensation claim, including the



"Certification of Physician or Practitioner" form and "Return to Work Status" form. Timely submission of reports and forms is necessary in order to promptly initiate workers' compensation benefits, or cease payment of benefits when the employee returns to work. All reports and forms shall be submitted in a timely manner in accordance with the requirements of the Texas Workers' Compensation Act.

**Temporary Assignment Positions** - If an employee is certified by the health care provider to return to work, but in less than full duty status, this agency may provide a temporary assignment position to the employee. Directors and managers are responsible for identifying temporary assignment positions to facilitate return to work based on the business necessity of filling the employee's position, the employee's entitlement to FMLA leave, the availability of temporary assignments, and other appropriate factors. These temporary assignments shall be coordinated with the return to work coordinator and/or human resources manager. The maximum length of time that a temporary assignment may last must be based on relevant factors including the business necessity of the employee's original position being filled. Temporary assignment positions shall be identified, assigned, and managed on a case by case basis based upon the business necessity of the agency. The temporary assignment position shall be documented in a "bona fide offer of employment" letter to the employee.

**Bona Fide Offer of Employment** - The bona fide offer of employment letter shall include the following information:

- The type of position offered and the specific duties;
- A statement that the agency is aware of and will abide by any physical limitations under which the treating doctor has authorized the employee to return to work;
- The maximum physical requirements of the job;
- The wage rate of the job;
- The location of the temporary assignment;
- The expected duration of the temporary assignment;
- The consequences of not accepting a temporary assignment, in terms of duration and amount of temporary income benefits payable under the Texas Workers' Compensation Act, and if the leave has not been designated by the agency as FMLA leave, the appropriate administrative penalties/disciplinary measures by the agency as specified in the human resources policies/procedures.
- The person to contact if the employee has questions regarding the temporary assignment, job modifications or questions regarding the FMLA or ADA.

The employee may accept or reject this bona fide offer of employment. The employee should be informed that rejection of the bona fide offer of employment may result in workers' compensation temporary income benefits (if applicable) being stopped by the Workers' Compensation Division as the state's insurance carrier. If the employee accepts the bona fide offer of employment, then the employee shall perform the duties of the temporary assignment position for the term of the assignment or until the

employee is able to return to full duty, whichever is sooner. If the employee rejects the bona fide offer of employment, the employee will remain off work until the end of the

FMLA leave entitlement period or until the employee is certified by the health care provider to return to full duty.

If the employee is unable to return to full duty by the end of the temporary assignment period and/or by the end of the employee's FMLA leave entitlement period, the employee's continued employment with the agency will be considered based upon the business necessity of having the employee's position filled and whether any reasonable accommodation is required under the ADA.

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## STEPS FOR REQUESTING MILITARY LEAVE OF ABSENCE and LEAVE WITHOUT PAY

State employees and their Supervisor shall complete the following steps prior to deployment for an extended period of time or being placed on military orders for training:

1. Employee receives military orders and is responsible for providing notice to the employer, i.e. to the Supervisor & State Human Resources Office.
2. Supervisor is responsible for immediately notifying the State Human Resources Office when a request for military leave has been submitted.
3. Employee shall advise employer if:
  - a) he/she is resigning from his/her State position or
  - b) requesting a Leave of Absence for military duty.
4. Employee shall be counseled (if employee is available) on the use of available leave while on Military Leave of absence. **If Leave Without Pay is requested during the military duty, the Supervisor shall request prior approval from State Human Resources Office.**
5. Employee shall consult with the following departments **before** deployment/military orders:
  - a) State Human Resources Office..... Leave Specialist (512) 782-5306
  - b) State Human Resources Benefits Office.....Benefits Coordinator (512) 782-6971
  - c) State Human Resources Leave Accounting Office...Leave Accounting Specialist(512) 782-5571
  - d) State Payroll Office.....Danette McWilliams (512)782-5295
6. Employee shall complete and sign all future timesheets prior to Deployment/military orders.

The employee's supervisor is responsible for ensuring the timesheets are signed and submitted to the State Human Resources Leave Accounting Office. The employee's supervisor is responsible for immediately reporting any deviation to the time recorded on the timesheets to the State Human Resources Leave Accounting Office.

If the above option is not feasible, the employee shall submit written authorization allowing the State Human Resources Office or other designee to complete and sign timesheets in the employee's absence (sample copy of memo attached and may be changed to reflect the specific circumstances)

7. Copy of the Military Orders (and written authorization, if applicable) shall be included with each month's timesheet.
8. Upon return from deployment/military orders, employee has re-employment rights as stated under USERRA and shall contact the State Human Resources Office & Supervisor for re-application for position. (Copy of USERRA attached.)  
Employee shall provide the State Human Resources Office with a copy of form DD214.
9. Once employee returns to work, the Supervisor shall instruct employee to contact the State Human Resources Office immediately to ensure all benefits, payroll deductions, and leave accruals are reinstated.

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**TEXAS MILITARY DEPARTMENT**  
**Request for Emergency Leave**  
**For Death in Employee's Family**

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An employee is entitled to a maximum of 24 hours emergency leave, with pay for a death in the employee's family. An employee's family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents and grandchildren (including step relatives). The request must be approved by Human Resources. If approved, a copy of the Emergency Leave approval must be attached with the employee's timesheet.

---

Name of Employee: \_\_\_\_\_

Directorate/Section: \_\_\_\_\_

Total Number of Emergency Leave Hours Requested: \_\_\_\_\_

**Date:** \_\_\_\_\_ **TO** **Date:** \_\_\_\_\_

**Deceased Relationship to Employee or Spouse:**

**Spouse**

**Parent**

**Child(ren)**

**Brother**

**Sister**

**Grandparent**

**Grandchild(ren)**

---

Approval Recommended By:

\_\_\_\_\_  
Supervisor's Printed Name

\_\_\_\_\_  
Supervisor's Signature

Approved      Disapproved

\_\_\_\_\_  
Human Resources Representative Printed Name

\_\_\_\_\_  
Human Resources Representative Signature

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# TEXAS MILITARY DEPARTMENT

## Request for Emergency Leave for Good Cause

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An employee may be granted emergency leave for reasons determined by the agency head to be good cause. Except when the agency is closed due to weather conditions or in observance of a holiday, an employee must request emergency leave for good cause. After the supervisor's signature, the request should be sent to the State Human Resources Director for review. The request must be approved by either the Adjutant General, as agency head, or the Executive Director, as designee and administrative head. A copy of the completed Emergency Leave Form must be forwarded to the Leave Accountant in State Human Resources.

---

Name of Employee: \_\_\_\_\_  
Printed Name Signature

*By signing and submitting this request I am indicating my intent to return to my position with the agency on expiration of the period of emergency leave.*

Directorate/Section: \_\_\_\_\_ Position: \_\_\_\_\_

Total Number of Emergency Leave Hours Requested: \_\_\_\_\_

Beginning Date: \_\_\_\_\_ Ending Date: \_\_\_\_\_

Supervisor Concur: \_\_\_\_\_  
Supervisor's printed name Supervisor's signature

### JUSTIFICATION:

Approval Recommended By: \_\_\_\_\_  
State Human Resources Director (or designee) Date

---

### DECISION:

\_\_\_\_\_ APPROVED OR \_\_\_\_\_ DISAPPROVED

\_\_\_\_\_ OR \_\_\_\_\_  
John F. Nichols Date Bill Wilson Date  
Major General, TXANG Executive Director  
Adjutant General



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**TEXAS MILITARY DEPARTMENT**  
Request for Approval of Administrative Leave For Outstanding Performance

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Name of Employee:

Directorate/Branch:

Total Number of Administrative Leave Hours Requested:

Awarded for which fiscal year:

Justification:

---

Requestor: \_\_\_\_\_  
Print Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

1<sup>st</sup> Level Supervisor: \_\_\_\_\_  
Print Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

Director: \_\_\_\_\_  
Print Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

Verified by HR Representative: \_\_\_\_\_

APPROVED /  DISAPPROVED \_\_\_\_\_

Executive Director

Date

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Certification of Health Care Provider for  
Employee's Serious Health Condition  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003  
Expires: 5/31/2018

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

Employee's job title: \_\_\_\_\_ Regular work schedule: \_\_\_\_\_

Employee's essential job functions: \_\_\_\_\_

Check if job description is attached: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: \_\_\_\_\_  
First Middle Last

**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax:(\_\_\_\_\_) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

**Mark below as applicable:**

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

No  Yes. If so, dates of admission:

\_\_\_\_\_

Date(s) you treated the patient for condition:

\_\_\_\_\_

Will the patient need to have treatment visits at least twice per year due to the condition?  No  Yes.

Was medication, other than over-the-counter medication, prescribed?  No  Yes.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

No  Yes. If so, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_

2. Is the medical condition pregnancy?  No  Yes. If so, expected delivery date: \_\_\_\_\_

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition:  No  Yes.

If so, identify the job functions the employee is unable to perform:

\_\_\_\_\_

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PART B: AMOUNT OF LEAVE NEEDED**

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? \_\_\_No \_\_\_Yes.

If so, estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? \_\_\_No \_\_\_Yes.

If so, are the treatments or the reduced number of hours of work medically necessary?  
\_\_\_No \_\_\_Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

\_\_\_\_\_

Estimate the part-time or reduced work schedule the employee needs, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? \_\_\_No \_\_\_Yes.

Is it medically necessary for the employee to be absent from work during the flare-ups?  
\_\_\_ No \_\_\_ Yes. If so, explain:

\_\_\_\_\_

\_\_\_\_\_

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency : \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours or \_\_\_ day(s) per episode

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Certification of Health Care Provider for  
Family Member's Serious Health Condition  
(Family and Medical Leave Act)

U.S. Department of Labor  
Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.

OMB Control Number: 1235-0003  
Expires: 5/31/2018

**SECTION I: For Completion by the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protections because of a need for leave to care for a covered family member with a serious health condition to submit a medical certification issued by the health care provider of the covered family member. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. §§ 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: \_\_\_\_\_

**SECTION II: For Completion by the EMPLOYEE**

**INSTRUCTIONS to the EMPLOYEE:** Please complete Section II before giving this form to your family member or his/her medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave to care for a covered family member with a serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. §§ 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form to your employer. 29 C.F.R. § 825.305.

Your name: \_\_\_\_\_  
First Middle Last

Name of family member for whom you will provide care: \_\_\_\_\_  
First Middle Last

Relationship of family member to you: \_\_\_\_\_

If family member is your son or daughter, date of birth: \_\_\_\_\_

Describe care you will provide to your family member and estimate leave needed to provide care:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_



**SECTION III: For Completion by the HEALTH CARE PROVIDER**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as “lifetime,” “unknown,” or “indeterminate” may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), or genetic services, as defined in 29 C.F.R. § 1635.3(e). Page 3 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider’s name and business address: \_\_\_\_\_

Type of practice / Medical specialty: \_\_\_\_\_

Telephone: ( \_\_\_\_\_ ) \_\_\_\_\_ Fax:( \_\_\_\_\_ ) \_\_\_\_\_

**PART A: MEDICAL FACTS**

1. Approximate date condition commenced: \_\_\_\_\_

Probable duration of condition: \_\_\_\_\_

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?  
\_\_\_ No \_\_\_ Yes. If so, dates of admission: \_\_\_\_\_

Date(s) you treated the patient for condition: \_\_\_\_\_

Was medication, other than over-the-counter medication, prescribed? \_\_\_ No \_\_\_ Yes.

Will the patient need to have treatment visits at least twice per year due to the condition? \_\_\_ No \_\_\_ Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?  
\_\_\_ No \_\_\_ Yes. If so, state the nature of such treatments and expected duration of treatment:

\_\_\_\_\_  
\_\_\_\_\_

2. Is the medical condition pregnancy? \_\_\_ No \_\_\_ Yes. If so, expected delivery date: \_\_\_\_\_

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs care (such as medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**PART A: QUALIFYING REASON FOR LEAVE**

1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

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2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military; a document confirming the military member's Rest and Recuperation leave; a document confirming an appointment with a third party, such as a counselor or school official, or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached.

Yes       No       None Available

**PART B: AMOUNT OF LEAVE NEEDED**

1. Approximate date exigency commenced: \_\_\_\_\_

Probable duration of exigency: \_\_\_\_\_

2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency?

Yes       No

If so, estimate the beginning and ending dates for the period of absence:

---

3. Will you need to be absent from work periodically to address this qualifying exigency?    Yes     No

Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

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Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):

Frequency: \_\_\_\_\_ times per \_\_\_\_\_ week(s) \_\_\_\_\_ month(s)

Duration: \_\_\_\_\_ hours \_\_\_\_\_ day(s) per event.

**PART C:**

If leave is requested to meet with a third party (such as to arrange for childcare or parental care, to attend counseling, to attend meetings with school, childcare or parental care providers, to make financial or legal arrangements, to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact information of the individual or entity with whom you are meeting (i.e., either the telephone or fax number or email address of the individual or entity). This information may be used by your employer to verify that the information contained on this form is accurate.

Name of Individual: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

Describe nature of meeting: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PART D:**

I certify that the information I provided above is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. 2616; 29 CFR 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE EMPLOYER.**

**PART B: AMOUNT OF CARE NEEDED:** When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery?  No  Yes.

Estimate the beginning and ending dates for the period of incapacity: \_\_\_\_\_

During this time, will the patient need care?  No  Yes.

Explain the care needed by the patient and why such care is medically necessary:

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5. Will the patient require follow-up treatments, including any time for recovery?  No  Yes.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

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Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

---

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?  No  Yes.

Estimate the hours the patient needs care on an intermittent basis, if any:

\_\_\_\_\_ hour(s) per day; \_\_\_\_\_ days per week from \_\_\_\_\_ through \_\_\_\_\_

Explain the care needed by the patient, and why such care is medically necessary:

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7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? \_\_\_ No \_\_\_ Yes.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: \_\_\_ times per \_\_\_ week(s) \_\_\_ month(s)

Duration: \_\_\_ hours or \_\_\_ day(s) per episode

Does the patient need care during these flare-ups? \_\_\_ No \_\_\_ Yes.

Explain the care needed by the patient, and why such care is medically necessary: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Signature of Health Care Provider**

\_\_\_\_\_  
**Date**

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210.  
**DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT.**

Certification for Serious Injury or  
Illness of a Current  
Servicemember - -for Military Family Leave  
(Family and Medical Leave Act)

U.S. Department of Labor

Wage and Hour Division



DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR; RETURN TO THE PATIENT

OMB Control Number: 1235-0003  
Expires: 5/31/2018

**Notice to the EMPLOYER**

**INSTRUCTIONS to the EMPLOYER:** The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave due to a serious injury or illness of a current servicemember to submit a certification providing sufficient facts to support the request for leave. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 CFR 825.310. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees or employees' family members created for FMLA purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 CFR 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 CFR 1635.9, if the Genetic Information Nondiscrimination Act applies.

**SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee Is Requesting Leave**

**INSTRUCTIONS to the EMPLOYEE or CURRENT SERVICEMEMBER:** Please complete Section I before having Section II completed. The FMLA permits an employer to require that an employee submit a timely, complete, and sufficient certification to support a request for FMLA leave due to a serious injury or illness of a servicemember. If requested by the employer, your response is required to obtain or retain the benefit of FMLA-protected leave. 29 U.S.C. 2613, 2614(c)(3). Failure to do so may result in a denial of an employee's FMLA request. 29 CFR 825.310(f). The employer must give an employee at least 15 calendar days to return this form to the employer.

**SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in 29 CFR 825.125**

**INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a current member of the Regular Armed Forces, the National Guard, or the 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. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a current servicemember's serious injury or illness includes written documentation confirming that the servicemember's injury or illness was incurred in the line of duty on active duty or if not, that the current servicemember's injury or illness existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that the current servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the servicemember's condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 CFR 1635.3(f), or genetic services, as defined in 29 CFR 1635.3(e).

**SECTION I: For Completion by the EMPLOYEE and/or the CURRENT SERVICEMEMBER for whom the Employee Is Requesting Leave:**

(This section must be completed first before any of the below sections can be completed by a health care provider.)

**Part A: EMPLOYEE INFORMATION**

Name and Address of Employer (this is the employer of the employee requesting leave to care for the current servicemember):

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Name of Employee Requesting Leave to Care for the Current Servicemember:

First

Middle

Last

Name of the Current Servicemember (for whom employee is requesting leave to care):

First

Middle

Last

Relationship of Employee to the Current Servicemember:

Spouse  Parent  Son  Daughter  Next of Kin

**Part B: SERVICEMEMBER INFORMATION**

(1) Is the Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves?  
Yes  No

If yes, please provide the servicemember's military branch, rank and unit currently assigned to:

---

Is the servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)?

Yes  No

If yes, please provide the name of the medical treatment facility or unit:

---

(2) Is the Servicemember on the Temporary Disability Retired List (TDRL)?  
Yes  No

**Part C: CARE TO BE PROVIDED TO THE SERVICEMEMBER**

Describe the Care to Be Provided to the Current Servicemember and an Estimate of the Leave Needed to Provide the Care:

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**SECTION II: For Completion by a United States Department of Defense (“DOD”) Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs (“VA”) health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in 29 CFR 825.125. If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator).**

(Please ensure that Section I above has been completed before completing this section. Please be sure to sign the form on the last page.)

**Part A: HEALTH CARE PROVIDER INFORMATION**

Health Care Provider’s Name and Business Address:

\_\_\_\_\_

Type of Practice/Medical Specialty: \_\_\_\_\_

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private health care provider, or (5) a health care provider as defined in 29 CFR 825.125:

\_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

**PART B: MEDICAL STATUS**

(1) The current Servicemember’s medical condition is classified as (Check One of the Appropriate Boxes):

**(VSI) Very Seriously Ill/Injured** – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

**(SI) Seriously Ill/Injured** – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

**OTHER Ill/Injured** – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.

**NONE OF THE ABOVE** (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition” under § 825.113 of the FMLA. If such leave is requested, you may be required to complete DOL FORM WH-380-F or an employer-provided form seeking the same information.)

(2) Is the current Servicemember being treated for a condition which was incurred or aggravated by service in the line of duty on active duty in the Armed Forces? Yes  No

(3) Approximate date condition commenced: \_\_\_\_\_

(4) Probable duration of condition and/or need for care: \_\_\_\_\_

(5) Is the servicemember undergoing medical treatment, recuperation, or therapy for this condition? Yes  No

If yes, please describe medical treatment, recuperation or therapy:

\_\_\_\_\_

**PART C: SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER**

(1) Will the servicemember need care for a single continuous period of time, including any time for treatment and recovery? Yes  No

If yes, estimate the beginning and ending dates for this period of time: \_\_\_\_\_

(2) Will the servicemember require periodic follow-up treatment appointments? Yes  No

If yes, estimate the treatment schedule: \_\_\_\_\_

(3) Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointments? Yes  No

(4) Is there a medical necessity for the servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)?  
Yes  No

If yes, please estimate the frequency and duration of the periodic care:

\_\_\_\_\_  
\_\_\_\_\_

**Signature of Health Care Provider:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT**

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years, in accordance with 29 U.S.C. 2616; 29 CFR 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 20 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution AV, NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION; RETURN IT TO THE PATIENT.**