

# **LEAVE POLICY FOR SIXTH COURT OF APPEALS**

It is the policy of this court to comply with the terms of Chapter 661 of the Texas Government Code as it is amended from time to time. At the time of the initial adoption of this policy, the types of leave governed by Chapter 661 included the following:

- Sick Leave Pool(see §661.001–.008),
- Vacation Leave (§661.151–.153),
- Sick Leave (§661.201–.207),
- Emergency Leave (death in family, §661.902(a)),
- Other Emergency Leave (for good cause, §661.902(b)),
- National Guard Emergency leave (§§ 661.903, 661.904(d), (f), and 661.9041),
- Military Leave (§661.904),
- Emergency Volunteer Leave (“emergency medical services volunteers” or “volunteer firefighters,” §661.905),
- Foster Parent Leave §661.906),
- Red Cross Disaster Service Leave §661.907),
- Leave of Absence (§661.909),
- Assistance Dog Training Leave (§661.910),
- Outstanding-Performance Administrative Leave (§661.911),
- Family and Medical Leave (§661.912),
- Parental Leave (§661.913),
- Voting Leave (§661.914),
- Organ or Bone Marrow Donor Leave (§661.916),
- Blood Donation Leave (§661.917),
- Amateur Radio Operator Leave (§661.919),
- CASA Volunteer Leave (§661.921),
- Reserve Law Enforcement Officer Leave (§661.922),
- Leave During Agency Investigation (§661.923),
- Medical and Mental Health Care Leave for Certain Veterans (§661.924).

The types of leave to be covered by this court’s Leave Policy is intended to expand or contract as Chapter 661 is amended, over time, to expand or contract the types of leave covered under that Chapter, and it is the policy of this court to cover any types of leave set out, at any time, in Chapter 661 and to exclude any not set out, at any time, in Chapter 661.

The intent of this policy is to govern leave for court employees under Chapter 661 and to supplement those statutes that may be part of Chapter 661 from time to time, to provide clear and objective guidelines to establish under what circumstances an employee of the court may be entitled to, or may be granted, each type of leave provided by Chapter 661.

A. Sick Leave Pool:

The Sixth Court of Appeals hereby establishes (and ratifies and adopts the same to be administered under these terms) a sick leave pool under which court employees may voluntarily transfer sick leave earned by the employee to a sick leave pool for use by other qualifying employees. The Clerk of Court shall administer the pool and shall be referred to herein as the Administrator.

General: The court has established, and hereby ratifies to be administered under these terms, a sick-leave pool where hours have, over the years, been contributed by various employees when they have left the court's employment. The idea for the pool is that it is to be used in case of catastrophic illness or injury for those who have not abused the sick-leave system.

A catastrophic illness or injury is a severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all paid leave earned<sup>1</sup> by that employee. (*See* 43 TEX. ADMIN. CODE § 4.51)

Policy Considerations: It is the policy of this court to retain SL Pool hours for use by those who have been "good citizens" (i.e., have not abused sick leave by using it for arguably optional situations, in small, relatively frequent amounts) and encounter a catastrophic illness/condition themselves. We also ought to encourage people to have a certain minimum amount of SL accumulated in their own account. This tends to keep folks on the job and retain SL for what it was intended, that is, real sickness or injury. A good goal is to achieve a personal balance of at least 20 days' sick leave.

Facts: Using any SL from the SL pool, reduces the amount available to others, even those who have previously never taken any SL (the "righteous" user). But, we seldom have had any need to tap the pool at all. The only time, in current memory, when the SL pool was tapped was many years ago.

Contributions: Any current employee may contribute one or more days of that employee's accrued sick leave, and the Administrator shall credit the time contributed to the SL Pool. Any retiring employee may designate the number of hours of accrued sick leave to be used for his/her retirement credit and the number of hours to be contributed to the sick leave pool.

Withdrawals: A current court employee may be approved to use pool hours under this policy, if that employee has exhausted his/her sick leave because of (1) catastrophic illness or injury or (2) previous donation of time to the pool. The Administrator shall have the authority and discretion to determine if an applying employee (1) has established a pattern of repeatedly and electively using his/her SL for personal convenience rather than true sickness and (2) therefore has a balance of less than 20 days' accumulated sick leave, vacation leave, and comp time; in which case the Administrator shall require the applying employee, in any period of time away from work due to sickness, medical condition, or injury, to: (A) first use the SL, vacation time, and comp time they

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<sup>1</sup>This Court interprets "all paid leave earned" to include normal sick leave and normal vacation leave, but to exclude any sick leave pool hours and exceptional sick leave, which are not "earned" by the employee.

have accumulated, and (B) incur unpaid time off that the days used in (A) and (B) totals 20 days, before qualifying for payment of sick leave from the SL Pool. Employees determined by the Administrator, in his or her discretion, to have not established such a pattern (i.e., of repeatedly and electively using their SL for personal convenience rather than for true sickness) will not incur any such sanction. The employee who wishes to use SL Pool sick leave shall apply to the Administrator for permission to withdraw time from the pool and also supply to the Administrator a written statement from a “licensed practitioner” who is treating the employee, or is treating the employee’s family member, as appropriate, sufficient to enable the Administrator to determine the employee’s eligibility for withdrawal from the pool. To the extent the Administrator concludes that the employee is eligible to withdraw from the SL Pool, the Administrator shall approve the transfer, shall credit the withdrawn time to the employee, and shall so notify the employee. No withdrawals shall be approved except for catastrophic illness/injury to the employee or the qualifying member of the employee’s immediate family, and none shall be approved in excess of the lesser of one-third of the total time in the pool at that time or 90 days. Once a withdrawal has been approved and credited, it may be used as the employee’s own sick leave, except that such employee’s decedent’s estate cannot use any time so transferred/credited from the SL Pool.

B. Sick Leave for Employees (see Subchapter G. §§ 661.201–.207)

1. Normal Sick Leave. To be eligible to take accumulated sick leave without a deduction in salary during a continuous period of more than three working days, an employee absent due to sickness, injury, or pregnancy and confinement shall send, as soon as practicable, to the Chief Justice or his/her designee a doctor's certificate showing the cause or nature of the condition or another written statement of the facts concerning the condition that is acceptable to the Chief Justice. No doctor's certificate or other written statement is required for shorter periods, unless the Chief Justice decides otherwise in a particular case and so notifies the employee in question. (see §661.202 (g))

2. Exceptions to Normal Sick Leave. If an employee is using sick leave, an exception (extension) to the amount of sick leave may be granted by decision of the Chief Justice if all the following conditions are met: (1) the Administrator of the Sick Leave Pool determines that the employee has not established a pattern of repeatedly and electively using his/her Sick Leave for personal convenience rather than true sickness, (2) the Chief Justice, based on an added, specific written statement from a treating “licensed practitioner” that the employee needs up to five additional days off of work from the court due to the qualifying illness or injury, determines that the employee needs such an extension of sick leave beyond his/her normal sick leave and his/her transferred sick leave from the Sick Leave Pool. This policy shall be maintained in written form, made available to all Court employees, and provided to the State Auditor on request. A statement of each such exception and the reasons for each shall be attached to this Court’s duplicate payroll voucher for the payroll period affected by the authorized exceptions. (See § 661.202, esp. (i), (j))

C. Emergency Leave:

1. Death in the Immediate Family. The Court allows up to three (3) days’ emergency leave, with pay and without deductions, for a death in the employee’s immediate family, as defined by §661.902(a). (see § 661.902(a))

2. Other Emergency Leave. Emergency leave without pay, for a reason other than death in the family, may be granted by the Chief Justice of this Court, if the employee requests such other emergency leave, the Chief Justice, in his or her discretion, determines that the employee has shown good cause for taking such other emergency leave, and it appears to the Chief Justice, in his or her discretion, that the employee being granted the other emergency leave intends to return to the employee's position with the Court on expiration of the period of emergency leave. This provision does not apply to require an employee application for such leave when the Court is closed due to weather conditions or in observance of a holiday. (see § 661.902(b),(c))

D. Emergency Volunteer Leave:

“Emergency medical services volunteers” and “volunteer firefighters” are entitled to paid leave to attend training for these roles conducted by state agency or institution of higher education, not to exceed 5 days per fiscal year. Since the Court may pay them while they are responding to emergency fire or medical situations, it is the Court’s policy to pay such active emergency time, so long as the Chief Justice determines that the Court can do so consistent with its fiscal situation and obligations known at the time. (see § 661.905)

E. Leave of Absence:

It is the policy of the court to grant employees in good standing a leave of absence of not to exceed twelve months, only if and to the extent that the Chief Justice determines that its doing so in each particular case would not seriously compromise the court’s ability to perform its roles on a timely basis. It would be required, in any event, that the employee first consume all paid leave entitlements, except that sick leave is to be used only if the leave is eligible for sick leave. (see § 661.909)

F. Outstanding-Performance Administrative Leave:

It is the policy of this court that, upon unanimous finding and approval of the terms of which by the then actively serving justices of this court, for documented outstanding performance by a key employee, this court may grant an employee paid administrative leave of up to 32 hours in any fiscal year. (see § 661.911)

*Adopted: December 6, 2017*