

Executive Directive

PD-46, “Medical and Parental Leave”



October 20, 2023 (rev. 9)
Supersedes January 2, 2022 (rev. 8)

Authority

1. Consolidated Omnibus Budget Reconciliation Act, 29 U.S.C. §§ 1161–1169
2. Family and Medical Leave Act, 29 U.S.C. §§ 2601–2654
3. 29 C.F.R. § 825.125
4. Genetic Information Nondiscrimination Act, Pub. L. No. 110-233, 122 Stat. 881
5. Tex. Bus. & Comm. Code §§ 3.401-.402
6. Tex. Bus. & Comm. Code § 43.002(8)
7. Tex. Fam. Code §§ 2.001–.405
8. Tex. Gov’t Code § 493.001
9. Tex. Gov’t Code § 493.006(b)
10. Tex. Gov’t Code §§ 661.001–.922
11. Tex. Lab. Code § 408.025(a-1)
12. Tex. Occ. Code §§ 301.001–.657
13. Tex. Att’y Gen. Op. No. JM-1203 (1990)
14. BP-02.08, “Statement of Internal Control”

Applicability

Texas Department of Criminal Justice

Employment At Will Clause

This directive does not constitute an employment contract or a guarantee of continued employment. The Texas Department of Criminal Justice (TDCJ) reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director’s authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and does not create a legally enforceable interest for employees or limit the executive director’s, deputy executive director’s, or division directors’ authority to terminate an employee at will.

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Policy

The TDCJ grants leave for medical events affecting an employee or an employee's family member and for parental leave in accordance with applicable federal and state laws. The TDCJ grants leave without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information. No employee will be subjected to retaliation for opposing or reporting an alleged violation of a federal or state law relating to leave entitlements or for opposing or reporting employment discrimination.

Definitions

The following terms are defined for the purpose of this directive and are not intended to be applicable to other policies or procedures.

"Applicable Leave"

Accrued leave that may only be used under certain conditions. For example, under law, sick leave is only applicable when an employee or an employee's immediate family member is ill or for educational activities. An employee may not use accrued sick leave to take a vacation.

"As Soon as Practicable"

As soon as possible and practical, taking into account all of the facts and circumstances in the individual case.

"Certification"²

Written documentation supporting an employee's need for leave. Types of acceptable certification include:

- a. Health care provider's statement (HCPS), issued to the employee or a covered family member that documents a health condition;
- b. Department of Labor (DOL) forms;
- c. Division of Workers' Compensation (DWC) Form-073, Texas Workers' Compensation Work Status Report; or
- d. Proof of event.

"Child"²

Biological, adopted, or foster son or daughter, stepchild, legal ward, or a child for whom an individual is standing or has stood "in loco parentis."

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"Consolidated Omnibus Budget Reconciliation Act" (COBRA) ¹

Federal law requiring certain employers to offer continuation of group insurance coverage to qualified beneficiaries who lose coverage as a result of a qualifying reason, such as leave without pay-medical (LWOP-Medical).

"Covered Active Duty" ²

The *Family and Medical Leave Act* (FMLA) entitles eligible employees to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for a "qualifying exigency" arising out of the foreign deployment of the employee's spouse, son, daughter, or parent. FMLA leave for this purpose is called qualifying exigency leave. For members of the regular armed forces, covered active duty is duty during deployment of the member with the armed forces to a foreign country; and for reserve components of the armed forces covered active duty is duty during deployment of the member of the armed forces to a foreign country under a call or order to active duty in a contingency operation. Deployment to a foreign country means deployment to areas out of the United States, the District of Columbia, or any territory or possession of the United States. It also includes deployment to international waters.

"Department of Labor (DOL) Forms" include the following documents:

- a. WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition (*Family and Medical Leave Act*);
- b. WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition (*Family and Medical Leave Act*);
- c. WH-384, Certification of Qualifying Exigency for Military Family Leave (*Family and Medical Leave Act*);
- d. WH-385, Certification for Serious Injury or Illness of a Current Servicemember – for Military Family Leave (*Family and Medical Leave Act*); and
- e. WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (*Family and Medical Leave Act*).

"Educational Activities" ¹⁰

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.

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"Electronic Signature" ^{5,6}

Includes the statement 'electronically signed.' A signature may be made manually or by means of a device or machine; and using any name, including a trade or assumed name, or by a word, or symbol executed or adopted by a person with present intention to authenticate a writing.

"Emergency Response Situation"

An emergency that presents an immediate or potential threat to public safety as determined by a warden or department head.

"Essential Functions"

Position's fundamental job duties that an applicant or employee is required to be able to perform with or without a reasonable accommodation.

"Family" ²

For the purpose of family and medical leave, is an employee's spouse, parents, and son(s) or daughter(s).

"Family and Medical Leave" (FML) ²

Leave granted in accordance with the provisions of the *Family and Medical Leave Act* (FMLA), which is a federal law entitling an eligible employee to a specific number of workweeks of job-protected leave, with or without pay, during a 12-month period for a qualified reason under the FMLA. All qualifying reasons, except Military Caregiver Leave, entitle an employee to 12 workweeks of job-protected leave. Military Caregiver Leave entitles an employee up to 26 workweeks of job-protected leave during a single 12-month period.

"Health Care Provider" ³

A doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, licensed acupuncturist, nurse practitioner, nurse midwife, clinical social worker who is performing within the scope of their practice as defined under state law, any health care provider recognized under the Texas Employees Group Benefits Program, a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts, or an advanced practice registered nurse or physician assistant with authority delegated from a treating doctor to complete and sign a work status report regarding an injured employee's ability to return to work.

"Health Care Provider's Statement" (HCPS) ²

A written statement from an attending health care provider that identifies: (a) the description associated with the injury or illness; (b) the expected duration of the injury or illness; and (c) if the statement is for the care of a family member, the type and duration of assistance required, and projected date that assistance will no longer be required. It is possible for a written statement from the attending health

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care provider to meet the requirements to be considered both an HCPS and a release to return to work. However, an HCPS does not automatically meet the requirements to be a release to return to work. Except for an HCPS provided in association with the virtual visit program administered through the Employees Retirement System of Texas (ERS), the HCPS shall include a signature, electronic signature, or stamp from an authorized individual.

"Immediate Family" ¹⁰

For the purpose of taking accrued sick leave that is not designated as FML or for taking extended sick leave or LWOP-Medical, includes individuals who reside in the same household with the employee and are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Family and Protective Services. Minor children of the employee, whether or not living in the same household, are immediate family. An employee's use of such leave for family members not residing in the employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, adult child, or parent who needs such care and assistance.

"In Loco Parentis" ²

"In the place of a parent" and is the status of having day-to-day responsibilities to care for or financially support a child. This status may apply to an employee's relationship with a child or a person's relationship to an employee when the employee was a child. A biological or legal relationship is not necessary. For example, a host parent of a foreign exchange student is standing "in loco parentis" for the foreign exchange student.

"Intermittent Leave" ²

FML taken in separate blocks of time due to a single qualifying reason.

"Marriage" ⁷

Includes "ceremonial marriage" and "informal marriage," which are the two types of marriage recognized by the state of Texas and are defined as follows:

- (a) "Ceremonial Marriage" is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.
- (b) "Informal Marriage," previously known as common law marriage, is a marriage that is not necessarily documented through a county clerk, but is valid when a couple agree to be married and after that agreement live together in the state of Texas as a married couple and represent to others that they are married.

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"Military Caregiver Leave"²

Up to 26 workweeks of job-protected leave during a single 12-month period available to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a military member caring for the military member. The single 12-month period begins on the first day the eligible employee takes family and medical leave (FML) to care for the military member and ends 12 months after that date. If an eligible employee does not take all of the 26 workweeks of leave entitlement during the single 12-month period, the remaining part of the 26 workweeks of leave entitlement to care for the military member is forfeited.

"Military Member"²

(a) A member of the armed forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (b) a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the armed forces, including a member of the National Guard or Reserves, at any time during the five-year period preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. A special transitional rule exists that between October 28, 2009, and March 8, 2013, is not considered within the five-year period.

"Next of Kin of a Military Member"²

The nearest blood relative other than the military member's spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the military member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the military member has specifically designated in writing another blood relative as the nearest blood relative for purposes of military caregiver leave under the FMLA.

"Paid Leave Entitlements"

Include accrued sick, vacation, holiday, compensatory, overtime, and any donated sick leave or administrative leave.

"Paid Parental Leave"¹⁰

Administrative leave granted to an employee for the birth of a child, birth of a child by the employee's spouse, birth of a child by a gestational surrogate, or adoption of a child.

"Parent"²

A biological, adoptive, step, or foster father or mother, or an individual who stands or has stood "in loco parentis" to an employee when the employee was a child. This term does not include parents "in law."

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"Parent of a Military Member"

A biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member.

"Physically Worked"

The hours an employee reports for duty. The hours an employee is on leave with pay or leave without pay (LWOP) do not count as hours physically worked, except for military leave.

"Proof of Event"

Documentation of the occurrence of an event involving a specific person.

"Reduced Leave Schedule" ²

A leave schedule for an employee taking FML that reduces the employee's usual number of working hours per workweek or hours per regularly scheduled workday.

"Release to Return to Work" ^{2, 11}

A written statement from an employee's attending health care provider that identifies a date the employee may return to work and clearly indicates: (a) restrictions or limitations and whether they are permanent, long-term, intermittent, or temporary; or (b) no restrictions or limitations. Any statement without reference to restrictions or limitations shall be considered an unconditional release. It is possible for a written statement from the employee's attending health care provider to meet the requirements to be considered both a release to return to work and certification. However, a release to return to work does not automatically meet the requirements to be a certification. A release to return to work for an employee who has been absent due to a work-related injury or illness may consist of a DWC FORM-073, Texas Workers' Compensation Work Status Report.

"Rolling 12-Month Period" ²

(a) The 12-month period measured backward from the date an employee uses any FML; or (b) the 12-month period measured backward from the first LWOP calendar day within the period of LWOP.

"Serious Health Condition" ²

For the purpose of FML, is an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care, such as an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacitation or any subsequent treatment in connection with such inpatient care; or (b) continuing treatment by a health care provider.

Incapacity means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment, or recovery.

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Treatment by a health care provider includes: (a) treatment by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services; for example, a physical therapist under orders of or on referral by a health care provider; and (b) examinations to determine if a serious health condition exists and evaluations of the condition.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- a. A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: (1) treatment two or more times by a health care provider; or (2) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider, including a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition.
- b. Any period of incapacity due to pregnancy, including morning sickness, or for prenatal care.
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that: (1) requires periodic visits for treatment by a health care provider; (2) continues over an extended period of time, including recurring episodes of a single underlying condition; and (3) may cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, or epilepsy.
- d. A period of incapacity which is permanent, long-term, intermittent, or temporary due to a condition for which treatment may not be effective. The employee or family member shall be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- e. Any period of absence to receive multiple treatments administered by a health care provider, including any period of recovery for: (1) restorative surgery after an accident or other injury; or (2) a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment. Examples include chemotherapy or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease.

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- f. Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, only when inpatient hospital care is required, or complications develop.
- g. Treatment by a health provider for substance abuse. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FML.

The inclusion of substance abuse as a serious health condition does not prevent the TDCJ from taking disciplinary action against an employee for the illegal use of a controlled substance, in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Disciplinary action may not be taken solely because the employee is exercising the right to take FML for substance abuse treatment by a health care provider.

"Serious Injury or Illness" ²

For the purpose of FML, is: (a) in the case of a member of the armed forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the member in the line of duty on covered active duty in the armed forces, or an injury or illness that existed before the beginning of the member's covered active duty and was aggravated by service in the line of duty on covered active duty in the armed forces, and that may render the member medically unfit to perform the duties of the member's office, grade rank, or rating; or (b) in the case of a veteran who was a member of the armed forces, including a member of the National Guard or Reserves at any time during the five-year period preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, an injury or illness that was incurred by the member in the line of duty on covered active duty in the armed forces, or an injury or illness that existed before the beginning of the member's covered active duty and was aggravated by service in the line of duty on covered active duty in the armed forces that manifested itself before or after the member became a veteran.

"Sick Leave" ¹⁰

A leave status available to employees when injury, illness, or pregnancy and confinement prevents an employee from performing the essential functions of the job, or when an employee is needed to care for and assist an immediate family member with an injury or illness.

"Spouse" ²

A person to whom a person is legally married.

"State Parental Leave" ¹⁰

Up to 12 workweeks of job-protected leave, with or without pay, authorized by state law for employees who have been employed for fewer than 12 months by the state

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or who worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave that is limited to: (a) the birth of a natural child of the employee; or (b) the adoption by or foster care placement with the employee of a child younger than three years of age.

"Workday"

A day when an employee is normally scheduled to work.

"Working Retiree"

An active TDCJ employee who concurrently holds a retirement status through the Employees Retirement System of Texas (ERS). A working retiree is not eligible for extended sick leave or withdrawal from the sick leave pool or the family leave pool.

"Workweek"

(a) Any seven consecutive calendar days designated as state parental leave; or (b) any seven calendar days designated as FML regardless of whether the calendar days are consecutive.

Discussion

This directive includes the procedures for taking FML, state parental leave, accrued sick leave, extended sick leave, and LWOP-Medical, as well as the procedures for donating sick leave. The procedures for making contributions to or requesting withdrawals from the TDCJ's sick leave pool are included in PD-50, "Sick Leave Pool," and in PD-51, "Family Leave Pool" for the TDCJ's family leave pool.

An employee who fails to comply with this directive, unless compliance is not possible under the particular circumstances despite the employee's diligent, good faith efforts, may be subject to disciplinary action in accordance with PD-22 if the employee has returned to work, or administrative separation in accordance with PD-24, "Administrative Separation," if the employee is in a leave status.

Procedures

PART A: FAMILY AND MEDICAL LEAVE AND PAID PARENTAL LEAVE²

I. General Provisions

The FMLA entitles eligible employees up to 12 workweeks of job-protected accrued paid or unpaid leave during a rolling 12-month period for a qualified reason. The 12-month period of FML is measured backward from the date on which an employee uses any FML.

An eligible employee who is a military member's spouse, child, parent, or next of kin is entitled to up to 26 workweeks of job-protected accrued paid or unpaid leave during a single 12-month period to care for the military member. Spouses who are both TDCJ employees and eligible for FML are limited to a combined total of 12 workweeks of leave during any single 12-month period to care for a parent with a serious health condition, for the birth of a child and to bond with and care for the newborn, or for placement of a child with the employee for adoption or foster care and to bond with and care for the child after placement. The married couple is limited to a combined total of 26 workweeks of leave in a single 12-month period to care for a military member. Employees shall report all FML taken by a spouse to their human resources representative.

A. Family and Medical Leave Qualifying Reason

An FML qualifying reason includes:

1. Birth of a child and to bond with and care for a newborn child within the 12-month period beginning on the date of the child's birth;
2. Placement of a child with an employee via adoption or foster care and to bond with and care for the child within the 12-month period beginning on the date of the child's placement. Employees are entitled to FML before actual placement of the child if absence from work is necessary for the placement of the child to proceed, including absences for counseling sessions, appearances in court, consultations with attorneys or doctors representing the birth parent, or submission to a physical exam;
3. A serious health condition affecting an employee's spouse, child, or parent that requires the employee's care, such as providing basic medical, hygienic, nutritional, or safety needs, transportation to the doctor, or psychological comfort and reassurance. To qualify as FML with a parent caring for a child, the child is required to be either under 18 or age 18 or older and incapable of self-care because of a mental or physical disability;
4. A serious health condition resulting in an employee's inability to perform any one of the essential functions of the employee's position;

5. A qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty in the armed forces. Qualifying reasons include the following:
 - a. Military events and related activities;
 - b. Childcare and school activities;
 - c. Financial and legal arrangements;
 - d. Counseling;
 - e. Post-deployment activities;
 - f. Short-notice deployment;
 - g. Rest and recuperation;
 - h. Parental care; or
 - i. Other activities related to active duty that the warden or department head and the employee agree will qualify as an exigency; and
6. To care for a military member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the military member.

B. Eligibility for Family and Medical Leave Entitlement

To be eligible for FML, an employee shall:

1. Have 12 months state service, consecutive or inconsecutive months with a break in service of seven years or less; and
2. Have physically worked at least 1,250 hours during the 12-month period immediately preceding the start of the FML.

Leave to perform service in the uniformed services during the 12-month period immediately preceding the start of leave counts toward the required minimum 1,250 hours.

C. Paid Parental Leave

1. General Provisions

Paid parental leave is an administrative leave granted to an employee for the birth of a child, birth of a child by the employee's spouse, birth of child by gestational surrogate, or adoption of a child. Paid parental leave is applied towards the allotted 12 workweeks of FML.

2. Eligibility for Paid Parental Leave

To be eligible for Paid Parental Leave, an employee shall:

- a. Have 12 months state service, consecutive or inconsecutive months with a break in service of seven years or less; and
- b. Have physically worked at least 1,250 hours during the 12-month period immediately preceding the start of the FML.

3. Leave Period

- a. An employee who is eligible for FML and has given birth to a child may receive up to 40 days of paid parental leave.
- b. An employee who is eligible for FML may receive up to 20 days of paid parental leave for:
 - (1). The employee's spouse who is giving birth;
 - (2). A gestational surrogate who is giving birth; or
 - (3). The adoption of a child.

4. Use of Paid Parental Leave

An employee is not required to use all available accrued paid leave before receiving paid parental leave. However, an employee shall take all paid parental leave in a continuous block, not intermittently.

5. Requesting Paid Parental Leave

An employee requesting paid parental leave shall:

- a. Complete a PERS 24 indicating the appropriate leave category for the entire period of requested paid parental leave; and
- b. Attach certification to the PERS 24; and
- c. Submit the documents to the employee's supervisor for approval.

6. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

D. Midstream Eligibility

To be eligible for FML midstream, an employee shall:

1. Have physically worked at least 1,250 hours during the 12-month period immediately preceding the start of the leave; and
2. On the employee's anniversary of date-of-hire, have 12 months state service and become FML eligible.

E. Intermittent Leave or Reduced Leave Schedule

1. An FML-eligible employee may take intermittent leave or a reduced leave schedule for a qualifying exigency or if a certification indicates a need for such leave due to a serious health condition affecting the employee or the employee's eligible family member.
2. An FML-eligible employee may not take intermittent leave or a reduced leave schedule:
 - a. For a child's birth or to bond with and care for a newborn child who is not affected by a serious health condition; or

- b. To bond with and care for a child placed through adoption or foster care who is not affected by a serious health condition.

F. Use of Applicable Leave

An employee shall exhaust all applicable accrued paid leave entitlements and may designate the order in which the time shall be used while taking FML, prior to being placed in an LWOP-FML status, unless the employee chose to freeze the accrued leave while receiving workers' compensation benefits or short-term and long-term disability benefits.

G. Position, Pay, and Benefit Entitlements

At the conclusion of FML, an employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions. However, the employee has no greater right to reinstatement or to other benefits and conditions of employment than what would have otherwise existed if the employee had continued working. For example, if a position would have been deleted or moved if the employee had continued working, the position may be deleted or moved even though the employee is on FML.

H. Impact of Leave Without Pay-Family and Medical Leave on Insurance Coverage

1. Upon receiving notification from Employee Services, Human Resources Division, of an employee's use of LWOP-FML, the ERS sends a notification to the employee's personal address regarding any payment required to continue insurance coverage.
2. During LWOP-FML, state contributions toward the cost of employee and dependent health insurance coverage continues as if the employee were taking paid leave.
 - a. If a part-time employee takes LWOP-FML and fails to pay the employee portion of the monthly premiums, to include tobacco premiums, the insurance coverage will be cancelled due to non-payment of premiums.
 - b. If a full-time employee takes LWOP-FML and fails to pay the employee portion of the monthly premiums, to include

tobacco premiums, for dependent coverage, the insurance coverage will be reduced to employee only.

- c. If an employee does not immediately return to work upon exhaustion of LWOP-FML, the state contribution toward the cost of employee and dependent health insurance coverage ceases. The employee shall reimburse the TDCJ for any state contributions made while the employee was taking LWOP-FML. There may be an exception to this reimbursement requirement if the employee fails to return to work as a result of a serious health condition affecting the employee or a family member, or as a result of other circumstances beyond the employee's control.

3. When the employee returns to work, a pre-existing conditions clause shall not be applicable to the employee disability coverage if the pre-existing period had been satisfied prior to the employee taking LWOP-FML.

II. Taking Family and Medical Leave

A. Employee Responsibilities

An employee who fails to comply with the following procedures may have FMLA denied and be subject to disciplinary action in accordance with PD-22 if the employee has returned to work, or administrative separation in accordance with PD-24 if the employee is in a leave status.

1. The employee shall provide notice of the employee's need to take leave. The notification shall include the nature of the injury or illness and, if known, the expected duration of the absence. If the expected duration of absence is unknown, daily notification to the employee's supervisor is required until a certification is received.
2. If the need for leave is foreseeable, an employee shall provide at least 30 calendar days advance notice to the employee's supervisor or human resources representative before the leave is to begin. Notification shall include the nature of the injury or illness and, if known, the expected duration of the absence.

The employee is required to provide notice of the need for leave one time only; however, the employee shall advise the employee's

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supervisor as soon as practicable, if the dates of scheduled leave change, are extended, or were initially unknown.

3. If the need for leave is not foreseeable, such as a medical emergency, an employee shall give notice as soon as practicable in accordance with the employee's unit or department written call-in procedures. Such notice may be provided by another person if the employee cannot provide the notice.
4. Upon receipt of a Leave Letter 301, Notification of Family and Medical Leave (LTR 301), the employee shall provide their supervisor with a PERS 24, TDCJ Leave Request, and certification by the due date stated in the LTR 301.
5. Upon receipt of a Leave Letter 592, Request for Additional Information or Recertification (LTR 592), the employee shall provide the requested documentation by the due date stated in the LTR 592.
6. An employee taking LWOP-FML shall turn in the employee's ID card, keys to TDCJ premises, and any other TDCJ issued items or equipment, such as uniforms or parking permits, to the employee's human resources representative within five workdays of the first LWOP calendar day.
7. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

B. Supervisor Responsibilities

Supervisors shall coordinate with the human resources representative to ensure employee leaves are managed in accordance with applicable TDCJ policies and absences are designated as FML when appropriate.

1. A supervisor shall ensure any documentation related to the need for leave, such as certification or PERS 24, is provided to the human resources representative as soon as practicable.
2. Upon being notified by an employee of the need for leave due to an unforeseeable event, the supervisor shall obtain as many facts as possible from the employee, including whether the leave is due to the employee's or a family member's medical condition and

the anticipated amount of leave required. The supervisor shall inform the human resources representative of the employee's need for leave as soon as practicable.

3. The supervisor shall notify the human resources representative if an employee does not comply with the requirements to provide a certification in accordance with this directive.

C. Human Resources Representative Responsibilities

1. Notification of Family and Medical Leave

When notified of an employee's absence, the human resources representative shall determine whether the employee is eligible for FML and whether the leave may be due to an FML reason.

- a. If the employee is ineligible for FML, the human resources representative shall:

- (1) Inform the employee of the reason for ineligibility by completing an LTR 301 located on the TDCJ mainframe within the Payroll/Personnel System (PPS) and obtaining the employee's signature or mailing the LTR 301 to the employee via first class mail within five workdays of the employee's initial request for leave. A copy of the LTR 301 shall be placed in the employee's medical file;

- (2) If the request for leave was due to the birth of the employee's natural child, adoption, or foster care placement of a child under three years of age, complete an LTR 301, and mail it to the employee via first class mail, informing the employee of the employee's eligibility for state parental leave; and

- (3) Inform the employee of any requirements relating to the appropriate leave designation.

- b. If the employee is eligible for FML, the human resources representative shall:

- (1) Complete an LTR 301, attach a PERS 24, *The Genetic Information Nondiscrimination Act of 2008 (GINA)*⁴ statement and obtain the employee's signature or

mail the documents to the employee via first class mail within five workdays of the employee's initial request for leave; and

- (2) A copy of the LTR 301 shall be placed in the employee's medical file. The LTR 301 is valid for 12 months for the same qualifying reason.
 - (3) If the certification is not received by the due date stated in the LTR 301, FML is denied and the human resources representative shall begin administrative separation procedures in accordance with PD-24 or, if the employee has returned to work, the employee may be subject to disciplinary action in accordance with PD-22.
- c. Upon receipt of the PERS 24 and certification, confirm the certification is complete.
- (1) If the certification is received, but insufficient, the human resources representative shall complete an LTR 592, and mail to the employee via first class mail within two workdays.

If the completed certification is not received by the due date stated on the LTR 592, FML is denied and the human resources representative shall begin administrative separation procedures in accordance with PD-24 or, if the employee has returned to work, the employee may be subject to disciplinary action in accordance with PD-22.

- (2) If the certification is received but is still insufficient, the employee shall be notified that the certification is still insufficient and shall have until the due date stated on the LTR 592 to provide the certification. If the employee fails to provide the certification by the due date, FML is denied and the human resources representative shall begin administrative separation procedures in accordance with PD-24 or, if the employee has returned to work, the employee may be subject to disciplinary action in accordance with PD-22.

2. Designation of Family and Medical Leave

Within five workdays of receiving the completed certification, the human resources representative shall complete a Leave Letter 594, Designation Notice (LTR 594), and mail to the employee. If an eligible employee should be placed on LWOP-FML, the human resources representative shall forward the PERS 24, with any attachments, to the warden or department head for approval.

3. Recertification

If an employee requires FML beyond the original certification, the human resources representative shall complete an LTR 592 within two workdays after the expiration of the current certification that an additional certification is required by the due date on the LTR 592.

4. Intermittent Leave or Reduced Leave Schedule

If an employee eligible for FML submits certification indicating a chronic serious health condition that requires intermittent FML or a reduced leave schedule, the certification may be valid for up to six months.

5. Exhaustion of Accrued Leave

If an FML eligible employee exhausts all paid leave entitlements prior to exhausting the employee's FML entitlement, the human resources representative shall place the employee in an LWOP-FML status until the employee exhausts the employee's FML entitlement.

6. Exhaustion of Family and Medical Leave Entitlement

If an employee exhausts the FML entitlement, the human resources representative shall complete an LTR 594 and mail to the employee within five workdays.

- a. If eligible, the employee shall be placed in another appropriate leave status; or
- b. The employee shall be separated due to expiration of leave entitlements.

7. Midstream Entitlement

Based on the rolling 12-month period of eligibility, previously used FML hours drop off after one year and the employee recoups previously used FML in the current leave period in the same manner and amount used. The employee should be notified of the additional FML hours available by sending an LTR 594 within five workdays.

8. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

D. Warden or Department Head Responsibilities

The warden or department head shall approve a PERS 24 for LWOP-FML when an employee is eligible for FML and the need for leave is due to an FML reason. The signed PERS 24, with all attachments, shall be forwarded to the human resources representative for processing and recordkeeping.

PART B: STATE PARENTAL LEAVE¹⁰

I. General Provisions

State parental leave is a maximum 12-workweek leave of absence for an employee employed by the state for fewer than 12 months or who worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave. State parental leave is limited to the birth of the employee's natural child or the adoption or foster care placement of a child under three years of age.

II. Leave Period

State parental leave begins on the date of the birth of a natural child, or the effective date of the adoption or foster care placement of a child under three years of age. Every seven calendar days of state parental leave shall count as one workweek. An employee may not take intermittent state parental leave.

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III. Use of Applicable Leave

- A. An employee shall first use all available and applicable accrued paid vacation, sick, and family leave pool while taking state parental leave, prior to going on LWOP. State 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 employee of a child younger than three years of age.
- B. An employee may use sick leave for the adoption of a child under three years of age for a maximum of six weeks; the leave may not be used intermittently.
- C. An employee may elect to use or freeze accrued compensatory or holiday leave, or overtime, prior to using LWOP-State Parental leave. An employee shall not be allowed to intermittently use accrued leave while taking LWOP-State Parental leave.

IV. Requesting State Parental Leave

An employee requesting state parental leave shall:

- A. Complete a PERS 24 indicating the appropriate leave category(ies) for the entire period of requested state parental leave, not to exceed 12 workweeks;
- B. Attach certification to the PERS 24; and
- C. Submit the documents to the employee's supervisor for approval.

Warden or department head approval is required only if the employee is requesting LWOP-State Parental leave. The warden or department head shall approve the PERS 24 if the employee is eligible for state parental leave and the need for leave is due to a state parental leave event.

V. Exhaustion of State Parental Leave

If an employee exhausts state parental leave, the human resources representative shall:

- A. Place the employee in another appropriate leave status, if eligible; or
- B. Separate the employee due to expiration of leave entitlements.

VI. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

PART C: SICK LEAVE¹⁰

I. Leave Accrual and Availability

- A. A full-time employee accrues eight hours of sick leave for each month or fraction of a month of employment. A part-time employee accrues sick leave in proportion to the number of hours worked in a pay period.
- B. An employee accrues sick leave beginning on the first day of state employment and on the first calendar day of each succeeding month of state employment.
- C. An employee must report to work before newly accrued sick leave may be used each month.
- D. An employee who is on LWOP for a full calendar month does not accrue sick leave for the month.
- E. There is no limit to the amount of sick leave that may be accrued.
- F. An employee who remains on the TDCJ's payroll to exhaust the employee's accrued vacation, compensatory, or holiday leave prior to employment separation may not use paid sick leave beyond the employee's last physical day of work.

II. Leave Balance upon Separation from Employment

A. Transfer to Another State Agency or Institution

A state employee who transfers from one state agency or institution to another without interruption of state employment is entitled to transfer the unused balance of the employee's accrued sick leave to the other state agency or institution.

B. Retirement Credit and Impact on Retirement

An employee may convert accrued sick leave to retirement credit in accordance with PD-44, "Retirement Benefits."

C. Restoration of Sick Leave Accruals upon Reemployment

1. Separation Due to a Reduction-in-Force (RIF)

An employee separated from state employment under a RIF shall have the employee's sick leave balance restored if the employee is reemployed by the state within 12 months after the end of the month the employee was separated.

2. Separation to Perform Service in the Uniformed Services

A former employee who is reemployed by the TDCJ following separation due to service in the uniformed services in accordance with PD-76, "Employment and Reemployment of Members of the Uniformed Services," shall be entitled to the restoration of sick leave accrued prior to service in the uniformed services.

3. Separation Due to Retirement from the TDCJ

Sick leave accrued by an employee prior to the employee's retirement from the TDCJ shall not be restored upon reemployment.

4. Other Separations

An employee separated from employment for any other reason shall have the employee's sick leave balance restored if the employee is:

- a. Reemployed by the TDCJ within 12 months after the end of the month the employee was separated from employment, provided there has been at least 30 calendar days since separation; or
- b. Reemployed by another state agency or institution within 12 months after the end of the month the employee was separated from employment.

D. Payment to Estate upon Employee's Death

Upon the death of an employee with six months of continuous state employment before the employee's death, the state shall pay the employee's estate the value of one-half of the employee's accrued sick leave or 336 hours, whichever is less. Payments are calculated at the

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employee's salary rate at the time of death and do not include longevity pay, hazardous duty pay, or benefit replacement pay.

For procedures regarding payment of accrued vacation leave to an employee's estate, see PD-49, "Leaves Other than Medical and Parental."

III. Use of Sick Leave

A. Categories of Available Leave

When an employee takes leave for a sick leave event, the employee shall use, in any order, all paid leave entitlements.

B. Use of Sick Leave for Pregnancy, Childbirth, and Adoption

A pregnant woman has the same rights as other employees absent from work for a temporary medical condition. Pregnancy is treated the same as any other temporary medical condition.

An employee may use sick leave for the adoption of a child under three years of age for a maximum of six weeks; the leave may not be used intermittently.

C. Use of Sick Leave for Educational Activities

A parent, stepparent, or legal guardian of a student in pre-kindergarten through 12th grade may use up to eight hours of accrued sick leave each fiscal year to attend educational activities for the employee's children. The employee shall notify the employee's supervisor in sufficient time to arrange for adequate staffing.

D. Use of Sick Leave for Self or Immediate Family Member

An employee may use sick leave for a personal injury, illness, or doctor visit, or that of an immediate family member in need of assistance.

IV. Employee Responsibilities

A. Notifying Supervisor

1. If an employee becomes ill while at work, the employee shall notify the employee's supervisor before leaving the unit or department.

2. An employee who is unable to report to duty as scheduled shall notify the employee's supervisor in sufficient time to arrange for adequate staffing based on current written unit or department call-in procedures.

If the employee is unable to provide notification because of a medical emergency, another person may provide such notification as soon as practicable.

- a. Notification shall include the nature of the injury or illness and, if known, the expected duration of the absence.
- b. If the expected duration of absence is unknown, daily notification to the employee's supervisor is required until a certification is received.

B. Employee Takes Three or Less Consecutive Workdays

If an employee takes three or less consecutive workdays of leave due to an injury or illness, the employee is not required to provide a certification except when the employee is placed in LWOP or in accordance with the procedures in Part D of this directive. However, an employee may choose to provide a certification to support the absence.

C. Employee Takes More Than Three Consecutive Workdays

If an employee takes more than three consecutive workdays of leave due to an injury or illness, the employee shall provide a certification, unless the leave is intermittent FML due to a chronic serious health condition for which a certification has already been submitted. See Part A, Section II.C.4.

An employee who fails to follow the procedures relating to providing a timely certification may be subject to disciplinary action in accordance with PD-22 if the employee has returned to work, or administrative separation in accordance with PD-24 if the employee is in a leave status.

1. Initial Certification

If the employee did not provide a PERS 24 and a certification prior to taking sick leave, the employee has by the due date indicated on the LTR 301 to submit the certification and the PERS 24 to the employee's supervisor.

- a. If the documentation submitted is not complete, the employee will be provided an LTR 592 within two workdays.
- b. The employee shall provide the required documentation by the due date indicated on the LTR 592.

The certification may support a period of absence up to six months. However, if the submitted certification does not indicate a duration, the statement is valid for 30 calendar days from the date of the certification. If terminal, lifetime, or permanent is stated and no duration is included, the certification is good for six months.

2. Recertification

If an employee requires leave beyond the original certification, the employee shall provide an additional certification within 15 calendar days after expiration of the previously approved certification.

D. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

V. Supervisor Responsibilities

Supervisors shall coordinate with the human resources representative to ensure employee leaves are managed in accordance with applicable TDCJ policies.

- A. A supervisor shall ensure any documentation related to the need for leave, such as a certification, or PERS 24, is provided to the human resources representative as soon as practicable.
- B. Upon being notified by an employee of the need for leave due to an unforeseeable event, the supervisor shall obtain as many facts as possible from the employee; for example, whether the leave is due to the employee's or a family member's medical condition and the anticipated amount of leave required. The supervisor shall inform the human resources representative of the employee's need for leave as soon as practicable.

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- C. The supervisor shall notify the human resources representative if an employee does not comply with the requirements to provide documentation in accordance with this directive.

VI. Human Resources Representative Responsibilities

A. Employee Misses More than Three Consecutive Workdays

If an employee anticipates missing, or actually misses, more than three consecutive workdays due to a sick leave event and does not provide a PERS 24 and a certification prior to taking leave, the human resources representative shall, within five workdays of the employee's initial request for leave:

1. Complete an LTR 301 and send to the employee via first class mail indicating that the employee will be placed on sick leave, that the employee is not FML eligible, and include a PERS 24;
2. Begin administrative separation procedures in accordance with PD-24, if a certification is not received by the due date indicated on the LTR 301; or
3. Complete an LTR 592 and mail to the employee within two workdays if the certification is received, but insufficient.

If the certification is received but still insufficient, the employee shall be notified that the certification is still insufficient and shall have until the due date indicated on the LTR 592 to provide the certification. If the employee fails to provide the certification by the due date and the employee is still in a leave status, the human resources representative shall begin administrative separation procedures in accordance with PD-24, or if the employee has returned to work, the employee may be subject to disciplinary action in accordance with PD-22.

B. Exhaustion of Accrued Sick Leave

If an employee exhausts all accrued sick leave, the human resources representative shall:

1. Place the employee in an appropriate leave status, if eligible; or
2. Separate the employee due to expiration of leave entitlements.

C. Employee's Return to Work

Upon the employee's return to work, the provisions in Part H apply.

PART D: MISUSE OF SICK LEAVE¹⁰

I. Use of Sick Leave When Other Leave was Denied, When Scheduled for Mandatory Overtime, or During an Emergency Response Situation

If an employee is absent based on a claim of injury or illness on a day or days for which the employee previously was denied vacation leave, holiday leave, compensatory leave, or overtime leave, or on a day or days that the employee was scheduled to work mandatory overtime or required to report to duty during an emergency response situation, the supervisor may interpret this as evidence of misuse of sick leave. At the time such an employee notifies the supervisor of the employee's absence, the supervisor shall verbally instruct the employee to furnish a certification.

A. If the employee was absent for three consecutive workdays or less, the verbal request to provide a certification will be due within 15 calendar days. If the employee fails to provide a timely certification, the supervisor may initiate disciplinary action in accordance with PD-22.

B. If the employee was absent for more than three consecutive workdays, the employee shall provide the certification in accordance with the applicable procedures in Part C, Section IV.C of this directive.

II. Pattern of Unscheduled Use of Leave Based on Claims of Injury or Illness

A pattern of unscheduled use of leave based on claims of injury or illness during the previous three months might be evidence of sick leave misuse. Examples of a pattern are found on the PERS 604, Guidelines for a Pattern of Misuse of Sick Leave. When records indicate a pattern of unscheduled absences based on claims of injury or illness, the supervisor may provide the employee with a PERS 499, Notification of Unscheduled Use of Leave Pattern. The PERS 499 requires the employee to submit a certification for all absences based on a claim of injury or illness during the specified 180-calendar day period; the beginning date of the 180-calendar day period will be the same as the date of the employee's signature.

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A. Documentation to Support Notification of Unscheduled Use of Leave Pattern

The supervisor shall document the absences that support a pattern of unscheduled leave on the PERS 499. The human resources representative shall sign the PERS 499, confirming that the documented absences were not certified for FML or supported by a submitted certification.

B. Initiating Disciplinary Action

The supervisor may initiate appropriate disciplinary action in accordance with PD-22 during the 180-calendar day period stated in the provided PERS 499, if the employee does not submit a certification. The human resources representative shall confirm in writing that the days of absence used to support disciplinary action were not certified for FML. If the employee was absent for more than three consecutive workdays, the employee shall provide the certification in accordance with Part C, Section IV.C of this directive.

PART E: DONATION OF SICK LEAVE HOURS¹⁰

I. General Provisions

A. An employee may donate any amount of the employee's accrued sick leave to another employee who:

1. Is a TDCJ employee; and
2. Is eligible to receive donated sick leave hours.

B. All donations of sick leave are voluntary.

C. An employee shall not provide or receive any form of compensation or a gift in exchange for a sick leave donation.

D. Solicitations for the donation of sick leave hours shall be conducted in a manner that is not disruptive or coercive.

E. An employee shall not receive service credit in the Employees Retirement System of Texas for any sick leave donated to the employee that is unused on their last day of employment.

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- F. The use of donated sick leave counts towards an employee's FML job-protected leave entitlement.
- G. Any leave accrued for each month the employee is on leave shall not be available until the employee returns to work.

II. Eligibility to Receive Donated Sick Leave

- A. To be eligible to receive donated sick leave, an employee shall:
 - 1. Have exhausted all paid leave entitlements, including any donated sick leave received before sick leave pool approval, and be subject to loss of compensation from the state;
 - 2. Have applied for withdrawals from the sick leave pool in accordance with PD-50, if applicable, and, if the application was approved, used available sick leave pool hours; and
 - 3. Provide a current certification containing a description of the catastrophic injury or illness.
- B. Eligibility to receive donated sick leave shall be verified through the Leaves Management area, Support Department, Human Resources Division.

III. Donating Employee Responsibilities

A TDCJ employee who wishes to donate accrued sick leave to another TDCJ employee shall:

- A. Complete a PERS 637, Sick Leave Donation, and submit the completed PERS 637 to the employee's human resources representative;
- B. Acknowledge that the donated leave shall be deducted from the employee's sick leave balance and will not be available for use;
- C. Acknowledge that the donation of sick leave is final and shall not be changed or modified once the donation is made;
- D. Acknowledge that donated sick leave hours unused by the recipient shall not be returned; and

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- E. Acknowledge that the employee has not received compensation or a gift in exchange for donating sick leave, or been threatened or coerced into donating sick leave hours.

IV. Receiving Employee Responsibilities

- A. Prior to receipt of any donated sick leave hours, an employee shall have exhausted all paid leave entitlements, including previously approved donated sick leave, and any time the employee may be eligible to withdraw from the Sick Leave Pool.
- B. An employee may refuse the donation.
- C. An employee shall provide a current certification.
- D. An employee may not donate any donated sick leave hours.

V. Human Resources Representative Responsibilities

The human resources representative shall provide a copy of the PERS 637 to the donating employee. The PERS 637 shall be forwarded to the Leaves Management area, Support Department, Human Resources Division for processing.

VI. Exhaustion of Donated Sick Leave

Upon the exhaustion of donated sick leave, the employee may apply for family leave pool in accordance with PD-51, or extended sick leave, if eligible. Working retirees are not eligible for extended sick leave. If ineligible for family leave pool or extended sick leave or upon exhaustion of family leave pool or denial of extended sick leave, the employee shall be placed in an appropriate LWOP status, or be separated for exhaustion of leave entitlements.

VII. Return to Work

- A. The employee shall submit a release to return to work to the human resources representative if the employee has been on leave for more than three consecutive scheduled workdays for their own injury or illness.
- B. If the employee or the employee's family member needs medical treatment for a catastrophic injury or illness for which donated sick leave is used, the employee shall provide the human resources representative with a certification containing:

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1. A description of the catastrophic injury or illness for which the donated hours were granted; and
2. The intervals and duration of continued treatment, such as two hours once a week for a two-month period.

Upon the employee's return to work, the provisions in Part H apply.

PART F: EXTENDED SICK LEAVE WITH PAY

I. General Provisions

- A. Extended sick leave with pay may be granted for up to six workweeks (this is a one-time only benefit).
- B. Use of extended sick leave with pay shall count toward an employee's FML 12-workweek job-protected leave entitlement.
- C. When an employee is on extended sick leave with pay, the time shall be reported as use of administrative leave.
- D. Any vacation and sick leave accrued for each month the employee is on extended sick leave shall not be available for use until the employee returns to work.

II. Eligibility

To be eligible for extended sick leave, an employee shall:

- A. Provide a certification;
- B. Have a minimum of five years of TDCJ service accrued since the employee's most recent TDCJ hire date at the onset or initial diagnosis of the current injury or illness;
- C. Have a minimum balance of 56 hours of sick leave accrued since the employee's most recent TDCJ hire date at the onset or initial diagnosis of the current injury or illness. If an employee has used all paid sick leave and it is past the day required to report time reporting errors, after the 25th day of the following month, manual time adjustments shall not be processed to give the employee sick leave hours to meet the required 56-hour sick leave balance for extended sick leave;

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- D. Have exhausted all accrued sick, vacation, holiday, compensatory leave, donated sick leave, overtime, and any applicable administrative leave;
- E. Have applied for withdrawals from the sick leave pool in accordance with PD-50, "Sick Leave Pool," if applicable, and, if the application was approved, used available sick leave pool hours;
- F. Not currently be on misuse of sick leave per PD-46 (PERS 499); and
- G. Not be a working retiree.

III. Request for and Approval of Extended Sick Leave

- A. An employee requesting extended sick leave shall submit a PERS 24 to the employee's warden or department head accompanied by a certification. The employee shall submit the PERS 24 prior to the exhaustion of all accrued or donated sick leave or, if applicable, leave granted through the TDCJ's sick leave pool program. The original PERS 24 shall cover the expected duration of the injury or illness as stated on the certification.
- B. The warden or department head shall forward the PERS 24 and certification to the Leaves Program Area, Employee Services, Human Resources Division, for verification of eligibility. The human resources director shall take final action and return the PERS 24 and certification to the appropriate human resources representative. The human resources director shall provide a copy of the approved PERS 24 to the Payroll Department.

IV. Exhaustion or Denial of Extended Sick Leave

Upon an employee's exhaustion or denial of extended sick leave, the employee shall be placed in LWOP-Medical or separated for exhaustion of leave entitlements.

V. Return to Work

Upon the employee's return to work, the provisions in Part H apply.

PART G: USE OF LEAVE WITHOUT PAY¹⁰

I. General Provisions

An employee may request LWOP when a condition affecting the mental or physical health of the employee or the employee's immediate family prevents the employee's performance of duties or essential functions. LWOP is not an entitlement and requires approval by the employee's warden or department head.

A. Required Exhaustion of Accrued Leave

All of an employee's accrued leave balances and administrative leave shall be exhausted before an employee is eligible to use LWOP, unless the employee is on workers' compensation and has frozen part or all of the employee's accrued leave.

B. Maximum Leave Without Pay Calendar Days

1. The maximum number of days an employee may take for any combination of LWOP is 180 calendar days within a rolling 12-month period, unless the employee is eligible for state parental leave or FML when the employee exhausts the 180-calendar day limit. In such an instance, the employee may continue taking LWOP-State Parental or LWOP-FML until the employee exhausts the applicable entitlement for such leave. The 180 calendar days may be used intermittently or all at once. The maximum period an employee can request for each category of LWOP is:

- a. LWOP-FML: 12 workweeks or 26 workweeks. See Part A, Section I of this directive;
- b. LWOP-Medical: 180 calendar days;
- c. LWOP-State Parental: 12 workweeks. See Part B, Section I of this directive;
- d. LWOP-Other: 30 calendar days within a rolling 12-month period. See PD-49, "Leaves Other than Medical and Parental;" or
- e. LWOP-Workers' Compensation (WC); 180 calendar days. See PD-45, "Workers' Compensation and Return to Work Program."

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2. If an employee reports for duty for any reportable portion of the employee's shift, a minimum of eight minutes, that calendar day shall not count as an LWOP calendar day.
3. A full shift of LWOP counts as one LWOP calendar day, regardless of the number of hours in the shift. All schedule cards and shift schedules shall be considered the same in calculation of an LWOP calendar day.
4. The number of LWOP calendar days taken by an employee includes the employee's regularly scheduled calendar days off occurring between the employee's first LWOP calendar day and the calendar day that the employee is released to return to work or exhausts the 180-calendar day maximum of LWOP. If an employee is released to return to work on or before the 180-calendar day LWOP maximum date, but according to the employee's card schedule, that day is a scheduled off day(s), the employee may return to work on the first day of the employee's next work cycle.
5. Disciplinary suspension and LWOP-Military do not count toward the 180-calendar day maximum.
6. The Payroll/Personnel System (PPS) LWOP History (LWOP2) screen identifies:
 - a. The total combined LWOP-FML, LWOP-Medical, LWOP-WC, LWOP-State Parental, and LWOP-Other calendar days used by an employee in the last 12 months, the "LWOP Days Used - Last 12 Months" field on the LWOP2 screen; and
 - b. An employee's remaining number of LWOP-FML, LWOP-Medical, LWOP-WC, LWOP-State Parental, or LWOP-Other calendar days, the "LWOP Days Remaining - 180 Days" field on the LWOP2 screen.
7. Once an employee begins any period of LWOP that counts against the 180-calendar day limit, the employee may only take the number of LWOP calendar days remaining at the beginning of the LWOP period.

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8. The availability of LWOP calendar days does not guarantee approval of an employee's request to take LWOP. Approval to take LWOP shall comply with this directive or PD-49.

C. Insurance Coverage While on Leave Without Pay-Full Calendar Month¹

An employee on approved LWOP may continue participation in the group insurance program. To continue participation, a cashier's check or money order payable to Texas Employees Group Benefits Program must be forwarded to the ERS for each month coverage is desired.

If the employee's spouse is a state employee or retiree with benefits, the employee and the employee's covered dependent(s) may be eligible to be placed on the spouse's insurance policy within 30 calendar days from the date the employee was placed on LWOP. The employee shall contact the human resources representative to make eligible insurance changes.

An employee on LWOP may continue the employee's insurance coverage; however, the employee shall not receive the state contribution toward the cost of the monthly premium. If coverage is cancelled for nonpayment of the premium, there will be no coverage until the employee returns to work. Upon returning to work, the employee shall have 30 calendar days to contact the human resources representative to make eligible insurance changes.

II. Employee Responsibilities

An employee who fails to follow the procedures relating to providing a timely certification may be subject to disciplinary action in accordance with PD-22 if the employee has returned to work, or administrative separation in accordance with PD-24, if the employee is in a leave status.

A. Initial Application for LWOP

1. An employee requesting LWOP shall provide the following to the employee's supervisor:
 - a. A current certification; and
 - b. A PERS 24 with Section III completed, requesting leave for the period identified on the certification, up to six months.

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2. If the employee did not provide the required certification prior to being placed in a LWOP status, the employee shall provide the documentation by the due date indicated on the LTR 301.
 - a. If the submitted certification is not complete, the employee shall be provided an LTR 592 within two workdays.
 - b. The employee shall provide the required certification by the date indicated on the LTR 592.

B. TDCJ Issued Equipment

An employee taking LWOP shall turn in the employee's ID card, keys to TDCJ premises, and any other TDCJ issued items or equipment, such as uniforms or parking permits, to the employee's human resources representative within five workdays of the first LWOP calendar day.

C. Return to Work

1. An employee returning to work from LWOP, after an absence of three workdays or less, has the due date indicated on the LTR 301 allowing for 15 calendar days to provide an HCPS supporting the LWOP period.
2. An employee's responsibilities upon return to work from LWOP after an absence of more than three workdays are set forth in Part H.

III. Supervisor Responsibilities

- A. The employee's supervisor shall notify the human resources representative when an employee without accrued leave balances leaves work or is unable to report to duty as scheduled.
- B. Upon receipt of a PERS 24 for LWOP, the employee's supervisor shall submit the PERS 24 with the supporting certification to the human resources representative.

IV. Human Resources Representative Responsibilities

When an employee requires use of LWOP, the human resources representative shall print the employee's LWOP2 screen and determine, beginning with the employee's first full day of LWOP, the maximum number

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of calendar days of LWOP that may be approved without exceeding the 180-calendar day limit.

A. If the employee has LWOP calendar days available for use, the human resources representative shall:

1. Enter a payroll status change (PSC) in the PPS PSC Update (PSCUPD) screen indicating the applicable code for LWOP; and
2. Complete and mail an LTR 301, if not previously mailed for the current period of leave.
 - a. If the employee fails to provide required certification to support a period of LWOP, begin disciplinary action in accordance with PD-22, if the employee has returned to work, or begin administrative separation procedures in accordance with PD-24, if the employee is in a leave status.
 - b. If the certification is received, but insufficient, complete an LTR 592 and mail to the employee within two workdays.

If the completed certification is not received by the required date on the LTR 592, or is received but still insufficient, begin disciplinary action in accordance with PD-22, if the employee has returned to work, or begin administrative separation procedures in accordance with PD-24, if the employee is in a leave status.

B. If the employee has no LWOP calendar days available for use and does not return to work prior to exhausting all leave benefits, the human resources representative shall:

1. Ensure the employee has received all eligible leave benefits;
2. Ensure the employee remains on payroll while exhausting the employee's compensatory and holiday leave prior to being separated from employment, if the employee has previously frozen accrued leave balances;
3. Contact the Leaves Program Area, Employee Services, Human Resources Division, for concurrence prior to separating the employee for expiration of LWOP; and

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4. Enter a PSC indicating expiration of LWOP upon receipt of concurrence from the Leaves Program Area. Upon approval of the PSC, mail a copy of the PSCUPD screen to the employee accompanied by a PERS 302, Expiration of Leave Without Pay Notification and a separation guide, advising the employee of reemployment procedures and possible health coverage continuation rights through provisions set by the COBRA.

V. Warden or Department Head Responsibilities

The warden or department head shall approve or disapprove all LWOP requests and ensure compliance with this directive. The warden or department head shall:

- A. Address employee non-compliance with this directive by initiating disciplinary action in accordance with PD-22 if the employee has returned to work, or initiating administrative separation in accordance with PD-24 if the employee is still in a leave status. Non-compliance includes:
 1. Failure to follow procedures relating to providing a timely certification; or
 2. An absence not covered by an approved LWOP request.
- B. Initiate the appropriate action for exhaustion of LWOP and the 180-calendar day limit.

PART H: RETURN TO WORK

I. Employee Responsibilities

A. Release to Return to Work

If an employee is returning to work after an absence of more than three consecutive workdays due to the employee's own injury or illness, the employee shall provide a release to return to work to the employee's supervisor.

If an employee only provided a release, then the employee would have to provide missing information by the due date listed on the LTR 592.

B. Certification

The employee shall submit certification supporting the period of absence from work, if such supporting documentation was not previously provided. The employee has by the due date indicated on the LTR 301 to submit the certification and PERS 24 to the employee's supervisor.

If an employee fails to provide certification, in accordance with these procedures, the employee may be subject to disciplinary action in accordance with PD-22.

C. Reinstatement of Insurance Coverage

Before or on the date an employee returns to work from LWOP, the employee shall contact the employee's human resources representative to initiate reinstatement of any insurance coverage.

II. Supervisor Responsibilities

An employee's supervisor shall not allow an employee who has been on leave due to the employee's own injury or illness for more than three consecutive workdays to return to work unless the employee has provided a release to return to work.

III. Human Resources Representative Responsibilities

A. Release to Return to Work

1. If the employee's release to return to work is unconditional but does not meet the criteria of certification supporting the period of absence, the employee may return to work. The human resources representative shall notify the employee's supervisor of the employee's release to return to work and, if the employee is returning from LWOP, enter a PSC indicating the employee's return to work.

2. If an employee's release to return to work identifies any restrictions, limitations, or indicates a need for a temporary change in work assignments, the human resources representative shall immediately provide the restrictions of the release to the warden or department head to determine the employee's status.

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3. If the release did not meet criteria of certification, then the human resources representative shall complete an LTR 592 within two workdays requesting missing information.
4. If the completed certification is not received by the date on the LTR 592, or is received but still insufficient, the human resources representative shall begin disciplinary action in accordance with PD-22.

B. Medical Conditions

If an employee's release to return to work or certification identifies a physical or mental restriction as a permanent, long-term, intermittent, or temporary medical condition, or if the employee states the restriction(s) are permanent, the human resources representative shall inform the employee that job placement assistance may be available from the accommodation coordinator, Support Department, Human Resources Division, in accordance with PD-14, "Americans with Disabilities Act and Employment of Persons with a Disability."

IV. Warden or Department Head Responsibilities

A. Release to Return to Work

1. If a parole officer, correctional officer, or sergeant, lieutenant, captain, or major of correctional officers, food service manager, or laundry manager, or a Salary Schedule C Office of the Inspector General employee provides a release to return to work that indicates a need for a temporary change in work assignments or restrictions, the warden or department head shall require the employee to continue taking leave until the employee provides an unconditional release to return to work, except for FML-eligible employees on intermittent leave, reduced leave schedules, or employees on workers' compensation. See PD-45, "Workers' Compensation and Return to Work Program."
2. If any other employee provides a release to return to work indicating a need for a temporary change in work assignments or restrictions, the warden or department head may elect to:
 - a. Temporarily assign the employee to an appropriate job within the unit or department in accordance with the procedures for temporary assignments in PD-79,

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- "Employee Transfers, Reassignments, and Temporary Assignments" for a period not to exceed 12 calendar weeks;
- b. Require the employee to continue taking leave until the employee provides an unconditional release to return to work; or
 - c. Allow the employee to work in current position with restrictions.
- B. If an employee returns to work and does not provide certification as required in this directive, the warden or department head shall initiate disciplinary action in accordance with PD-22.

PART I: FORMS / DOCUMENTS

The related forms and documents listed below are available by following the hyperlink.

- A. [LTR 301, Notification of Family and Medical Leave](#)
- B. [PERS 24, TDCJ Leave Request](#)
- C. [LTR 592, Request for Additional Information or Recertification](#)
- D. [DOL Form WH-380-E](#)
- E. [DOL Form WH-380-F](#)
- F. [DOL FORM WH-384](#)
- G. [DOL Form WH-385](#)
- H. [DOL Form WH-385-V](#)
- I. [LTR 594, Designation Notice](#)
- J. [PERS 604, Guidelines for a Pattern of Misuse of Sick Leave](#)
- K. [PERS 499, Notification of Unscheduled Use of Leave Pattern](#)

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- L. [PERS 637, Sick Leave Donation](#)
- M. [PERS 302, Expiration of Leave Without Pay Notification](#)

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Executive Director