

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-51, “FAMILY LEAVE POOL”
JANUARY 1, 2022
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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: PD-51
DATE: January 1, 2022
PAGE: 1 of 13
SUPERSEDES: None

EXECUTIVE DIRECTIVE

SUBJECT: FAMILY LEAVE POOL

AUTHORITY: Tex. Gov't Code §§ 493.001, 493.006, 661.021-.028; Texas Human Resources Management Statutes Inventory; BP-02.08, "Statement of Internal Controls"

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

This directive **does not** constitute an employment contract or a guarantee of continued employment. The 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.

POLICY:

The TDCJ administers a family leave pool to benefit employees of the TDCJ with employee or family care needs.

DEFINITIONS:

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

"Active Payroll" means all employees contained on the TDCJ's current payroll, including those on leave without pay (LWOP).

"Employee" is any person employed by the TDCJ on a full-time, part-time, or temporary basis.

"Family Leave Pool" is accrued sick or vacation leave voluntarily contributed by TDCJ employees to benefit TDCJ employees with eligible employee or family care needs. Working retirees are not eligible for withdrawal from the family leave pool.

“Family Leave Pool Administrator” is the Human Resources Division director or designee.

“Family Leave Pool Leave” is leave covered by withdrawals from the family leave pool.

“Health Care Provider” is 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) is 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 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,” for the purpose of utilizing the family leave pool for a serious illness, to include pandemic related illness or extenuating circumstances created by an ongoing pandemic, includes those 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 family leave pool 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.

“Release to Return to Work” is 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 as 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-73, Texas Workers’ Compensation Work Status Report.

“Serious Illness,” for the purpose of family leave pool, 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 serious illness, treatment, or recovery.

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 illness exists and evaluations of the illness.

“Workday” means a day when an employee is normally scheduled to work.

“Working Retiree” is an active TDCJ employee who concurrently holds a retirement status through the ERS. A working retiree is not eligible for extended sick leave or withdrawal from the family leave pool or sick leave pool in accordance with PD-46, “Medical and Parental Leave.”

PROCEDURES:

I. Contributing to the Family Leave Pool

A. General Provisions

1. All contributions to the family leave pool are voluntary.
2. An employee who contributes to the family leave pool may not designate the contributed hours for use by a specific employee.
3. Any hours contributed to the family leave pool will not be reinstated. An employee who contributes to the family leave pool shall meet the eligibility criteria in Section II of this directive to withdraw the allowable hours of family leave pool leave.
4. There is no limitation on frequency of contributions.
5. Family leave pool contributions are taxable and considered wages for income tax purposes. For example, if a correctional officer (CO) IV earning \$3,284.27 monthly contributes eight hours of accrued time, the value of those eight hours would be \$151.58. This is the amount that would be added to the employee’s gross wages amount reported in box 1 on the employee’s annual W2 statement. Employees should consult with a tax advisor regarding tax implications.

B. Employee Responsibilities

An employee who wishes to contribute to the family leave pool shall complete and submit a PERS 209, Family Leave Pool Contribution (Attachment A) to the employee's human resources representative.

1. Active Employees

Active employees may contribute accrued sick or vacation leave to the family leave pool.

- a. The minimum contribution a full-time employee may make to the family leave pool is eight hours, and contributions shall be in eight-hour increments.
- b. The minimum contribution a part-time active employee may make to the family leave pool is four hours, and contributions shall be on a proportionate basis. For instance, an employee who works 20 hours per week may contribute accrued sick leave in increments of four hours.

2. Retiring Employees

Upon satisfying the requirements for retirement, retiring employees may contribute any excess accrued vacation or sick leave hours to the family leave pool. Contributed vacation or sick leave hours are not required to be in four- or eight-hour increments and there is no minimum contribution requirement.

Sick leave accrued by an employee prior to the employee's retirement from the TDCJ will not be restored to the retiree's sick leave balance upon reemployment with the state, regardless of whether the employee contributes the hours to the family leave pool. A retiree will not be paid for any vacation leave hours contributed to the family leave pool.

3. Other Separating Employees

A separating employee is encouraged to contribute accrued sick or vacation leave hours to the family leave pool at the time of separation from state employment. Contributions, including minimum contributions, shall be in eight-hour increments if the separating employee is a full-time employee or four-hour increments if the separating employee is a part-time employee.

A separating employee will not be paid for any vacation leave hours contributed to the family leave pool. Any hours of sick or vacation leave

contributed to the family leave pool will not be restored to the employee's balance upon reemployment with the state, even if the reemployment occurs within 12 months of separation.

C. Human Resources Representative Responsibilities

1. Upon receipt of a completed PERS 209, the human resources representative shall key the number of contributed hours into the TDCJ Payroll/Personnel System (PPS) on the Family Leave Pool Contribution (FLPCU) screen unless the employee is separating and the payroll status change has already been entered into the PPS. In such instances, the human resources representative shall forward a copy of the PERS 209 to the Leaves Program Area, Employee Services, Human Resources Division, and the Leaves Program Area shall enter the hours into the PPS.
2. The human resources representative shall provide a copy of the PERS 209 to the employee and place the original PERS 209 in the employee's unit or department human resources file.

II. Withdrawing from the Family Leave Pool

A. General Provisions

1. An employee who withdraws from the family leave pool is not required to pay back the used pool leave.
2. Any family leave pool hours granted will count as medical or parental leave in accordance with PD-46.

B. Eligibility Criteria

To be eligible to withdraw from the family leave pool, an employee shall meet all the following eligibility criteria:

1. The employee shall:
 - a. Be on the TDCJ's active payroll;
 - b. Not be a working retiree;
 - c. Have exhausted all paid leave entitlements, including compensatory, holiday, overtime, sick, vacation, applicable administrative leave, extended sick leave, sick leave pool, and donated sick leave in accordance with PD-46 because of:
 - (1) The birth of a child;

- (2) The placement of a foster child or adoption of a child under 18 years of age;
 - (3) The placement of any person 18 years of age or older requiring guardianship;
 - (4) A serious illness to an immediate family member or the employee, including a pandemic-related illness; or
 - (5) An extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; and
- d. Have contributed a minimum of eight hours to the family leave pool during the current fiscal year.

2. Another family member may not currently be accessing the family leave pool for the same approved withdrawal request.

C. Computation of Maximum Allowable Hours

A state employee may not withdraw hours from the family leave pool in an amount that exceeds the lesser of:

- 1. One-third of the total balance of hours in the family leave pool; or
- 2. 90 days (720 hours).

The number of hours contributed by an employee to the family leave pool each fiscal year will determine the maximum number of allowable hours as indicated below:

POOL LEAVE	Number of Hours Contributed During Current Fiscal Year		
	8	16	24
Months of TDCJ Service Since Most Recent Hire Date	Allowable Hours		
0-24	160	240	320
25-48	240	320	400
49-60	320	400	480
61-96	400	480	560
97+	560	640	720

D. Submission of a PERS 210, Family Leave Pool Application for Withdrawal

1. Employee Responsibilities

a. Initial Request

To initially request withdrawal of family leave pool hours, an employee shall submit a PERS 210, Family Leave Pool Application for Withdrawal (Attachment B), with required attachments identified below, to the human resources representative. The PERS 210 shall be submitted prior to the exhaustion of all accrued paid leave entitlements to avoid a disruption in pay. The PERS 210 shall be returned to the employee if the PERS 210 is incomplete or does not have the required documentation.

The following applicable documents are required:

- (1) Birth of a Child, Placement of a Foster Child or Adoption of a Child Under 18 Years of Age, or the Placement of any Person 18 Years of Age or Older Requiring Guardianship

Submit and be listed on the other person's birth certificate, birth facts, or adoption or foster paperwork for a child under 18 years of age. This includes being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent. Proof of guardianship includes documentation that the employee is the guardian of a person who is 18 years of age or older.

- (2) Employee's Serious Illness

A current health care provider's statement shall be submitted containing a description of the serious illness.

- (3) Immediate Family Member's Serious Illness

A current health care provider's statement shall be submitted containing a description of the serious illness and required assistance to the family member by the employee.

- (4) Ongoing Pandemic

Applicable documentation, to include an essential caregiver designation, proof of daycare or school closures, or other appropriate documentation shall be provided due to

extenuating circumstances created by an ongoing pandemic.

b. Subsequent Requests

An eligible employee provisionally approved for more than 240 hours will only be granted up to 240 family leave pool hours at one time. At least five workdays prior to the exhaustion of a 240-hour increment, the employee shall submit an updated current health care provider's statement to the human resources representative to receive any remaining provisionally approved hours.

If the employee fails to submit the required documentation, the employee will be placed in LWOP status in accordance with PD-46 and will not be eligible to receive the remaining provisionally approved hours until the required documentation is submitted. If the employee enters LWOP status, the employee will not be eligible to receive subsequent family leave pool hours before the date the PERS 210 is submitted with the required documentation.

2. Human Resources Representative Responsibilities

a. Initial Request

Upon receipt of the PERS 210 and applicable documentation, the human resources representative shall review the PERS 210 and the applicable documentation for accuracy and completeness, date stamp the documentation, and obtain the warden, department head, or designee's signature on the PERS 210. The human resources representative shall then forward the PERS 210 and applicable documentation to the Leaves Program Area, Employee Services, Human Resources Division no later than the family leave pool admission deadline on the Payroll Department calendar.

b. Subsequent Requests

Upon receipt of updated applicable documentation, the human resources representative shall date stamp the documentation and forward the documentation and a copy of the pre-approved PERS 210 to the Leaves Program Area, Employee Services, Human Resources Division.

E. Review by Family Leave Pool Administrator

The Leaves Program Area, Employee Services, Human Resources Division shall forward all completed PERS 210 forms and applicable documentation to the

family leave pool administrator for review. The family leave pool administrator shall:

1. Consider each PERS 210 on a first-come, first-served basis. If two or more PERS 210 forms are received on the same day, the PERS 210 forms shall be prioritized based on months of total TDCJ service.
2. Approve all or part of the request, or deny the request; and
3. Return the PERS 210 to the Leaves Program Area, Employee Services, Human Resources Division.

The decision of the family leave pool administrator is final and may not be grieved or appealed to a higher level.

F. Employee Notification of Approval or Denial

1. Approval

Upon receipt of an approved PERS 210 from the family leave pool administrator, the Leaves Program Area, Employee Services, Human Resources Division shall immediately notify the human resources representative and the Payroll Department of the approval.

a. The human resources representative shall also be notified:

- (1) If the number of hours is available; or
- (2) If the number of hours is not available.

b. The human resources representative shall immediately notify the employee of the PERS 210 approval and availability of family leave pool hours.

c. The Leaves Program Area, Employee Services, Human Resources Division shall provide a copy of the approved PERS 210 to the human resources representative and employee when the family leave pool hours become available.

2. Denial

If the family leave pool administrator does not approve the PERS 210, the Leaves Program Area, Employee Services, Human Resources Division shall provide a copy of the denied PERS 210 to the human resources representative and the employee within 10 workdays from receipt of the PERS 210.

An employee may resubmit a denied PERS 210 with additional information within 14 calendar days of the date the Leaves Program Area, Employee Services, Human Resources Division sent the denied PERS 210 to the employee.

III. Use of Family Leave Pool Hours

A. Use of family leave pool hours will be in accordance with this directive and PD-46. A PERS 24 shall be submitted and approved with attached applicable documentation to use any family leave pool hours for the following:

1. The birth of a child;
2. The placement of a foster child or adoption of a child under 18 years of age;
3. The placement of any person 18 years of age or older requiring guardianship;
4. A serious illness to an immediate family member or the employee, including a pandemic-related illness; or
5. An extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member.

B. Transfer of Family Leave Pool Hours

If the PERS 210 was approved, the Leaves Program Area, Employee Services, Human Resources Division shall arrange for the transfer of approved family leave pool hours to the requesting employee's family leave pool balance when the hours become available.

C. Use of Accrued Leave While on Family Leave Pool Leave

An employee who uses family leave pool leave for a full calendar month will accrue paid leave for that month; however, the employee will only be eligible to use such accrued leave if the employee returns to work before or immediately following expiration of the granted family leave pool leave.

D. Return to Work

An employee on family leave pool leave for a serious illness who is released to return to full duty shall follow the return to work provisions in accordance with PD-46.

If the employee has not used all the family leave pool hours granted and the employee or the employee's family member does not need continued medical

treatment for the serious illness for which the family leave pool hours were granted, or the extenuating circumstance created by an ongoing pandemic for which the family leave pool hours were granted no longer requires the employee's absence, the human resources representative shall send an email to the Leaves Program Area, Employee Services, Human Resources Division, identifying the number of unused hours to be returned to the family leave pool.

E. Deceased Employee's Estate

The estate of a deceased employee is not entitled to payment for unused family leave pool hours. Any unused family leave pool hours shall be returned to the family leave pool effective the date of the employee's death. Upon notification of the employee's death, the human resources representative shall send an email to the Leaves Program Area, Employee Services, Human Resources Division, identifying the number of unused hours to be returned to the family leave pool.

Bryan Collier
Executive Director

**Texas Department of Criminal Justice
Family Leave Pool Contribution**

NAME: _____ Please Print: Last Name First Name	PAYEE ID: _____
UNIT OR DEPT: _____	MONTHS OF TDCJ SERVICE SINCE MOST RECENT HIRE DATE: _____
POSITION TITLE: _____	SALARY GROUP: _____
EMAIL: _____ (home)	_____ (work)

1. Current Accrued Sick Leave Balance: _____ / Vacation Balance: _____

2. Number of hours **CONTRIBUTING** to Family Leave Pool: Sick: _____ / Vacation: _____

Minimum contribution for a full-time active or separating employee is eight hours, and contributions shall be in eight-hour increments. Minimum contribution for a part-time active or separating employee is four hours, and contributions shall be in eight- or four-hour increments. There is no minimum requirement for retiring employees, and the contribution does not have to be in eight- or four-hour increments.

Please initial beside each of the following statements:

_____ Separating employees will not be paid for any vacation hours contributed to the family leave pool.

_____ Contributions may not be designated for any specific employee.

_____ Family leave pool contributions are taxable and considered wages for income tax purposes. For example, if a correctional officer (CO) IV earning \$3,284.27 monthly contributes eight hours of accrued time, the value of those eight hours would be \$151.58. This is the amount that would be added to the employee's gross wages amount reported in box 1 on the employee's annual W2 statement. Employees should consult with a tax advisor regarding tax implications.

Employee Signature

Date (mm/dd/yyyy)

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

DISTRIBUTION:

Original: Unit or Department Human Resources File – Activity Section

Copy: Employee

**Texas Department of Criminal Justice
Family Leave Pool Application for Withdrawal**

NAME: _____ PAYEE ID: _____
 Please Print: Last First MI MONTHS TDCJ SERVICE SINCE
 UNIT OR DEPT: _____ MOST RECENT HIRE DATE: _____
 POSITION TITLE: _____ SALARY GROUP: _____
 EMAIL: _____

- Date Family Leave Pool Request to begin:
 Initial Request: _____ First Subsequent Request: _____ Second Subsequent Request: _____
- Number of hours contributed to family leave pool this fiscal year (eight-hour increments for full-time employees and four-hour increments for part-time employees): _____
- Number of hours requested from family leave pool: _____
- Withdrawal:
 Request withdrawal due to:
 Birth of a child; or
 Placement of a foster child or adoption of a child under 18 years of age; or
 Placement of any person 18 years of age or older requiring guardianship; or
 Serious illness to Immediate Family Member or Employee, including a pandemic-related illness; or
 Extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member.
- Applicable documentation is attached.

Employee Signature _____
Date (mm/dd/yyyy)

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

Employee meets employment eligibility criteria and the PERS 210, Family Leave Pool Application for Withdrawal, is being forwarded to the family leave pool administrator for further consideration of the employee's or immediate family member's medical condition:

Warden, Department Head, or Designee's Signature _____
Date (mm/dd/yyyy)

A total of _____ hours have been approved based on eligibility and applicable documentation.

The request has been Approved Denied.

Unused hours shall be returned to the family leave pool.

The number of hours granted at this time are _____ (240 maximum)

Family Leave Pool Administrator Signature _____
Date (mm/dd/yyyy)

Subsequent Request	Applicable Documents Attached	Approved	Denied	Hours Granted (240 Maximum)	Pool Administrator Initials	Date
First						
Second						

DISTRIBUTION:

Original: Employee Master Human Resources File

Copy: Employee Unit or Department Medical File (Sick Leave Section)

Copy: Employee