



## TEXAS TECH UNIVERSITY™

### Operating Policy and Procedure

#### **OP 70.44: Sick Leave and Sick Leave Pool**

**DATE:** April 5, 2019

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to establish university policy for sick leave and Sick Leave Pool.

**REVIEW:** This OP will be reviewed in November of odd-numbered years by the Assistant Vice President for Human Resources, the Managing Director of Payroll & Tax Services and the TTUS Office of Equal Opportunity with substantive revisions forwarded through appropriate administrative channels to the Associate Vice President for Administration and Chief of Staff for the President.

#### **POLICY/PROCEDURE**

##### **1. Definitions**

###### **a. Regular Employee**

A person employed to work at least 20 hours per week, excluding students employed in positions that require student status as a condition of employment. Regular employees will earn sick leave entitlement beginning on the first day of employment and terminating on the last day of duty.

###### **b. Sick Leave Accrual**

A regular full-time employee will earn sick leave at the rate of eight hours for each month or fraction of a month of employment. Unused sick leave will be accumulated and carried forward each month. Regular part-time employees will earn sick leave on a proportionate basis. Sick leave accrual will terminate on the employee's last physical day on the job.

Workers employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40-hour-per-week employee.

###### **c. Immediate Family Member**

For sick leave purposes, immediate family is defined as those individuals who reside in the same household and are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services; and minor children of the employee, whether or not living in the same household. An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs such care and assistance as direct result of a documented medical condition.

d. **Sickness or Injury**

For purposes of using sick leave, sickness or injury includes an absence required for medical, dental, or optical examination or treatment; or for physical therapy and laboratory work or tests as ordered by a licensed practitioner.

e. **Documented Medical Condition**

A documented medical condition exists when the employee submits a licensed practitioner's certification to the employee's supervisor as to the nature of the sickness, injury, or confinement due to pregnancy.

**2. Sick Leave Use**

Regular employees will be entitled, without deduction in salary, to use sick leave subject to the following conditions:

- a. Sick leave with pay may be taken when sickness, injury, or pregnancy prevents an employee's performance of duty or when the employee is needed to care for and assist a member of their immediate family who is actually ill.

An employee who has been awarded leave under the Family and Medical Leave Act (FMLA) may use sick leave for the birth of a child or adoption of a child under three years of age, regardless of whether the child is ill at birth or at the time of adoption.

- b. An employee's use of sick leave to care for and assist family members not described in 1.c. above is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a documented medical condition.
- c. An employee who is on leave on the first day of a month may not use the sick leave the employee accrues for that month until after the employee returns to duty.
- d. To be eligible for accumulated sick leave with pay during a continuous period of more than three working days, the employee must provide to their supervisor a statement from a health care provider that indicates the employee was required to be off work due to sickness, injury, or pregnancy that prevented the employee from performing their duty, or that the employee was needed to care for and assist a member of their immediate family who is actually ill. This statement must further identify the dates the employee was unavailable to work. If the reason for the absence from work involves a serious health condition or a disability or there is some other administrative need for additional information, Human Resources may require additional documentation or information. If continued absence is expected, the statement should come from a health care provider and set forth the expected duration of the absence and reason for it. Absences lasting longer than three days or that are expected to happen on an intermittent basis for the same reason over a period of time may be eligible under the Family and Medical Leave Act (FMLA). An employee or the employee's supervisor may request that HR send an FMLA packet at any time based on a request to use sick leave.
- e. When an official holiday occurs during a paid sick leave, the holiday will not be charged against sick leave if the employee is eligible for holiday pay in accordance with [OP 70.42](#).

Holidays. Texas Tech University police do not observe the official holiday schedule and, therefore, are excluded from this provision.

- f. Malingering and other abuses of sick leave will constitute grounds for dismissal from employment. Taking sick leave to work for another employer will be considered abuse of sick leave. Taking sick leave for vacation days or for purposes other than permitted in this policy is prohibited and will constitute grounds for dismissal. The employee's supervisor may require a physician's statement for absences of three working days or less.
- g. An employee who is the parent of a child who is a student attending a grade from prekindergarten through 12th grade may use up to eight hours of sick leave each fiscal year to attend educational activities of their children. A parent in this section means a person standing in parental relation. Educational activity means a school-sponsored activity, including a parent-teacher conference, tutoring, a volunteer program, a field trip, a classroom program, a school committee meeting, an academic competition, and an athletic, music or theater program. The employee must provide reasonable advance notice of need for this leave.

### 3. **Notice and Reporting**

- a. An employee who must be absent from duty because of sickness, injury, or pregnancy shall notify their supervisor at the earliest practicable time and in accordance with departmental call-in procedures.
- b. The employee should make a reasonable effort to schedule health care provider appointments to minimize disruptions to the department's operations and should notify their supervisor as soon as possible after the appointment is made.
- c. Unless, otherwise agreed upon with the employee's supervisor, the employee will report their status to the supervisor at least every two weeks or more frequently if instructed to do so. This applies to all types of sick leave usage, including Sick Leave Pool, Family and Medical Leave, Parental Leave, etc. Failure to report will be grounds for termination of employment.
- d. The employee should report sick leave in a manner and form prescribed by the university in order to meet the payroll processing deadlines.

### 4. **Employee Separations and Sick Leave Accruals**

- a. An employee transferring between Texas Tech departments or state agencies will retain unused sick leave, provided service is uninterrupted.
- b. An employee separated from state employment under a formal reduction in force is entitled to have their sick leave balances restored if re-employed by the state within 12 months after the end of the month in which they were separated from state employment if they do not contribute the unused balance to the Sick Leave Pool when they leave employment.
- c. An employee separated from state employment for reasons other than a reduction in force who has not contributed any unused sick leave balances to the Sick Leave Pool is entitled to have their sick leave balances restored if:

- (1) They are re-employed by the same state agency or institution of higher education within 12 months after the end of the month in which they were separated from state employment, but only if there has been a break in employment with the state of at least 30 calendar days; or
  - (2) They are re-employed by a different state agency or institution of higher education within 12 months after the end of the month in which they were separated from state employment.
- d. An employee who retires and returns to state employment will not have their sick leave balance restored.
  - e. In the event of an employee's death, one-half of the employee's unused sick leave accumulation, not to exceed 336 hours, will be paid to the employee's estate as a death benefit, provided the employee has completed six months of continuous employment with the state before death.
  - f. A member of the Teacher Retirement System, upon retirement, may purchase one additional year of membership service credit, provided the employee has 50 days or 400 hours of accumulated state sick leave that is unused as of the last day of employment before retirement. Only five days per year of unused sick leave may be accumulated per year toward the 50 days or 400 hours.

## 5. Sick Leave Pool

### a. General Provisions

The Sick Leave Pool is intended to assist an employee and their immediate family in dealing with catastrophic illnesses or injuries that force them to exhaust all available leaves.

An employee must have completed six months of state service to be eligible to utilize the Sick Leave Pool. The maximum amount of sick leave that an employee may use from the Sick Leave Pool is 1,440 hours during employment at the university.

An employee is eligible to use time contributed to the sick leave pool if the employee has exhausted the employee's sick leave because of:

- (1) A catastrophic illness or injury; or
- (2) A previous donation to the pool.

An employee who is off work due to an on-the-job injury or illness is not eligible to use the Sick Leave Pool.

### b. Definitions

- (1) A **catastrophic illness or injury** is a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and forces the employee to exhaust all accrued leave and lose compensation.

- (2) A **severe condition** or combination of conditions is one that:
    - (a) Will result in death or is a severely debilitating condition that will result in the individual not meeting the essential functions of their job if not treated promptly or at regularly scheduled intervals (e.g., chemotherapy treatments, radiation treatments, etc.); OR
    - (b) Has been designated as terminal.
  - (3) **Licensed practitioner** means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of their license.
- c. Pregnancy
- (1) Pregnancy is not considered catastrophic unless severe illness and prolonged complications arise to either the mother or the child.
  - (2) Time off following the birth of a child is considered normal regardless of the method of delivery and will not be considered for Sick Leave Pool unless medical documentation shows complications that are catastrophic or severe as defined above to the mother or the child after the delivery.
- d. Restrictions on Use of Sick Leave Pool for Certain Surgeries
- Sick leave pool may not be used for time off for cosmetic, elective, or other non-medically necessary surgery except when life threatening conditions arise from them.
- e. Job Performance and Eligibility
- Employees must be meeting job performance expectations and observing work rules to be eligible for pool leave.
- f. Refund of Sick Leave Pool Time
- Employees who use pool leave are not normally required to pay back such leave. If, after receiving sick pool benefits, it is determined that the employee was ineligible for those benefits, all sick pool benefits must be refunded to the pool.
- g. Failure to Return to Work
- If an employee elects not to return to work for a reason not related to the catastrophic condition, sick leave pool benefits will end.
- h. Contributing Sick Leave to the Pool
- (1) Contributions to the Sick Leave Pool are strictly voluntary and must be in increments of eight hours, with the exception of a retiring employee who may contribute any unused balance.

- (2) A retiring employee may designate the number of accrued sick leave hours to be used for Teacher Retirement System service credit and the number of hours to be donated, upon retirement, to the Sick Leave Pool.
- (3) An employee who contributes sick leave to the Sick Leave Pool, and then uses all of their sick leave balance in the same fiscal year, may receive back and use the number of hours contributed to the pool that fiscal year without suffering a catastrophic illness or injury. Otherwise, the hours contributed to the Sick Leave Pool cannot be reclaimed.

i. Requesting Sick Leave Pool

- (1) A regular employee may apply for hours from the Sick Leave Pool by submitting completed application and physician’s certification forms to Human Resources. The documentation must contain sufficient information to allow the sick leave pool administrator to evaluate the employee’s eligibility. If eligibility cannot be determined from the documentation submitted, the application will be denied.
- (2) It is the employee’s responsibility to notify their supervisor when they apply for Sick Leave Pool and the expected length of absence.
- (3) Sick Leave Pool benefits cannot be used for an injury, illness, or family member other than those set forth in this policy. An employee will not receive more than the maximum allowable Sick Leave Pool hours, in accordance with their state service, in any 12-month period. Awarded Sick Leave Pool may be used only for the particular condition approved.
- (4) An employee must use all of their accrued sick leave and vacation leave before utilizing any approved Sick Leave Pool hours.
- (5) State service will be used to determine the annual maximum leave an employee is eligible to be awarded from the Sick Leave Pool. The following annual maximum amounts for sick leave awards are based on an employee’s state service at the time the initial award is granted:

YEARS OF SERVICE	MAXIMUM ELIGIBLE HOURS
At least 6 Months but less than 1 Year	40
At least 1 Year but less than 2 Years	120
At least 2 Years but less than 5 Years	240
At least 5 Years but less than 10 Years	560
10 Years or more	720

- (6) The employee must provide Human Resources, at least monthly following the date the employee is approved for the Sick Leave Pool, a written physician's certification that includes the expected duration of the absence and anticipated date of return to work as a result of the catastrophic illness or injury. In addition to certification, the employee must contact their supervisor at least once every two weeks to keep the supervisor advised of the employee’s situation and intent to return to work. The lack of such certification and contact with the university will be considered job abandonment, and the employee will be terminated from employment.

Texas Tech, at its discretion, may require a second or third medical opinion from an independent health care provider of Texas Tech's choosing when reason exists to question the necessity of the employee's sick leave. All second and third medical opinions will be paid for by Texas Tech. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the employee and Texas Tech. The third opinion will be the final opinion, and the opinion rendered will be binding on both the employee and Texas Tech.

- (7) An employee utilizing hours from the Sick Leave Pool will continue to accrue vacation and sick leave entitlements, but may not use the accrued leave until returning to work following the leave.
  - (8) An employee with a catastrophic illness or injury is not required to contribute to the Sick Leave Pool before being granted leave from the pool. An employee who is granted hours from the Sick Leave Pool is not required to pay the pool back for the leave used.
  - (9) Any unused balance of hours granted to an employee from the Sick Leave Pool will be returned to the pool if the employee returns to work before using all hours granted. If intermittent treatment is required for the catastrophic injury or illness, unused approved Sick Leave Pool benefits will be provided on an as-needed basis until the employee recovers from that catastrophic illness or injury or the benefit ends, whichever is earlier. The employee does not need to satisfy the catastrophic illness definition more than once per approved application for the same catastrophic illness or injury.
  - (10) The estate of a deceased employee is not entitled to payment for approved unused Sick Leave Pool hours.
  - (11) Intent to return to work is not required for an employee to be eligible for the Sick Leave Pool. However, an employee who utilizes the maximum hours of Sick Leave Pool benefits for which they are eligible at the time of application must return to work for 12 months following their last day of use of the Sick Leave Pool (or exceptional sick leave) benefits before they are eligible to apply for additional benefits from the Sick Leave Pool.
  - (12) If an employee has more than one Sick Leave Pool event within a 12-month period, all qualifying criteria and application requirements must be met for each event in order to utilize the available hours.
- j. Administration of the Pool
- (1) A single Sick Leave Pool will be administered for all regular faculty and staff employees of TTU/TTUS. The Assistant Vice President for Human Resources or their designee is responsible for the administration of the Sick Leave Pool.
  - (2) Requests for sick leave from the Sick Leave Pool will be submitted to the Assistant Vice President for Human Resources or their designee. Human Resources will have 15 workdays from the date a request and physician certification is received in which to approve all or part of the request or to deny the request.
  - (3) Human Resources will determine the number of hours granted for each catastrophic illness or injury. The amount granted for each catastrophic illness or injury:

- (a) Cannot exceed one-third of the balance of hours in the pool or the maximum allowable based on state service, whichever is less; and
  - (b) Will not extend past the date an employee qualifies for benefits from short or long-term disability insurance or past the date disability and/or retirement payments begin from the Teacher Retirement System, the Social Security Administration, or any other applicable program. All employees must inform Human Resources of qualification for disability or retirement payments and of the date such benefits begin.
- (4) The Assistant Vice President for Human Resources or their designee will notify the employee's department of the hours granted or denied. Sick Leave Pool hours will be applied to the employee's sick leave accrual beginning the first workday following expiration of the employee's earned paid leaves.
  - (5) Decisions of the Assistant Vice President for Human Resources relating to staff employees may be appealed to the President. Decisions of the Assistant Vice President for Human Resources relating to faculty employees may be appealed to the Provost and Senior Vice President.

#### 6. **Authoritative References**

Sick leave accrual – Texas Government Code, Section 661.202 (b) and (c)

Employee transfers – Texas Government Code, Section 661.205 (b)

Employee separation – Texas Government Code, Section 661.205 (a) and Opinion, Texas Office of the Attorney General, No. MW-109 (1979)

Multiple state agency employment – State Auditor's Office Leave Interpretation Letter, No. 01-03 (2001)

Sick leave usage – Texas Government Code, Section 661.202 (k)

Definition of family – Texas Government Code, Section 661.202(d) and (e); State Auditor's Office Leave Interpretation Letter, No. 97-04 (1996); and State Auditor's Office Leave Interpretation Letter, No. 01-04 (2001)

Sick Leave for Educational Activities – Texas Government Code, Section 661.206

Supervisor notification – Texas Government Code, Section 661.202 (f)

Faculty sick leave reporting requirement – Texas Government Code, Section 661.203

Return to work retiree sick leave balance – State Auditor's Office Technical Update Letter, No. 01-02 (2000)

Sick Leave Pool – Texas Government Code, Section 661.001 – 661.008; Board of Trustees Meeting, Employees Retirement System, October 24, 1989; State Auditor's Office Human Resources Question-and-Answer, September 19, 2007



7. **Forms**

All related forms are available on the Human Resources website:

<http://www.depts.ttu.edu/hr/forms.asp>

8. **Right to Change Policy**

Texas Tech University reserves the right to interpret, change, modify, amend, or rescind this policy, in whole or in part, at any time without the consent of employees.