

Executive Directive

PD-44, “Retirement Benefits”



January 31, 2024 (rev. 11)
Supersedes November 1, 2021 (rev. 10)

Authority

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| 1. Tex. Code Crim. Proc. § 42.0193 | 10. Tex. Gov't Code §§ 811.001-.102 |
| 2. Tex. Gov't Code § 493.001 | 11. Tex. Gov't Code §§ 812.001-.206 |
| 3. Tex. Gov't Code § 493.006(b) | 12. Tex. Gov't Code §§ 813.001-.514 |
| 4. Tex. Gov't Code § 493.007 | 13. Tex. Gov't Code §§ 814.001-.604 |
| 5. Tex. Gov't Code § 661.003 | 14. Tex. Gov't Code § 815.402 |
| 6. Tex. Gov't Code § 661.023 | 15. Tex. Gov't Code §§ 820.001-.103 |
| 7. Tex. Gov't Code § 803.201 | 16. BP-02.08, “Statement of Internal Controls” |
| 8. Tex. Gov't Code § 803.203 | |
| 9. Tex. Gov't Code § 810.004 | |

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 retirement program for TDCJ employees is administered by the Employees Retirement System of Texas (ERS).

Definitions

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

"Qualifying Felony"⁹

Any felony involving an incarcerated member of a criminal street gang, including: (a) bribery; (b) the embezzlement, extortion, or other theft of public money; (c) perjury; (d) engaging in organized criminal activity; (e) tampering with governmental record; (f) misuse of official information; (g) abuse of official capacity; or (h) conspiracy or the attempt to commit any of the offenses described in (a)-(g).

"Lump Sum"

A sum of money paid in one single payment for accrued vacation (annual) leave and/or overtime.

Procedures

I. Employee Retirement System (ERS) Membership^{11, 12, 13, 14, 15}

A. ERS Membership Date

ERS membership and ERS retirement contribution deductions begin your first day of employment or reemployment.

B. ERS Membership Contribution

All full- and part-time employees are required to be ERS members and contribute to ERS, unless previously retired from state employment.

1. Employees in Groups 1-3 contribute 9.5%. Group 1-3 employees in a hazardous duty position and contributing to the Law Enforcement Custodial Officers System (LECOS) contribute an additional 1.75%.
2. Employees in Group 4 contribute 6%. Group 4 employees in a hazardous duty position and contributing to LECOS contribute an additional 2%.
3. All retirement accounts are credited with interest each fiscal year.

II. Retirement Groups

- A. Your retirement group determines when you become eligible to retire and how ERS calculates your annuity. Your retirement group is based on when you began state employment.
 - 1. Group 1: Started before September 1, 2009
 - 2. Group 2: Started September 1, 2009 – August 31, 2013
 - 3. Group 3: Started September 1, 2013 – August 31, 2022
 - 4. Group 4: Started on or after September 1, 2022
- B. If you do not withdraw your retirement account and return to state employment, you will be placed in your former retirement group.
- C. If you withdraw your retirement account, this will remove you from your previous retirement group and will put you in a new retirement group based on your date of return to state employment.

III. Retirement Annuity

- A. For those in Groups 1, 2, or 3, your annuity calculation is based on your years of state service, your highest average salary, and your multiplier (2.3% or 2.8%).
 - 1. Group 1 is the average salary based on 36-month highest average salary and without an annuity reduction.
 - 2. Group 2 is the average salary based on 48-month highest average salary and has a five percent annuity reduction every year under age 60 with a 25% cap.
 - 3. Group 3 is the average salary based on 60-month highest average salary and has a five percent annuity reduction every year under age 62 with no cap.
- B. For those in Group 4, your annuity calculation is based on your age at retirement, your total account balance at retirement, and employer match, to include ERS annual investment earnings. Unlike other groups, annuities are expected to increase annually in retirement. This is dependent on investment earnings.

IV. Service Credit^{5, 6, 7, 8, 10, 12}

Service credit is credit for time worked. It is one of the factors used to calculate when you can retire and how much your annuity will be. As a state agency employee, you earn service credit for each eligible payroll period in which you work, and a retirement contribution is made.

A. Earned Service Credit

1. Sick and Vacation (Annual) Leave Credit - Retirement Groups 1, 2, and 3

- a. You can receive service credit for both your unused sick and vacation (annual) leave and each of these accounts are figured separately. The first 160 hours of leave gives you one full month of service credit. Months are calculated based on 160 hour increments; additional fractions of 160 hours are counted as full months of service credit. An hour over the first 160 hours is counted as one full month of service credit.

For example:

322:00 unused vacation (annual) leave = 3 months

319:00 unused sick leave = 2 months

Total ERS Creditable Service = 5 months

- b. Group 1 can use unused sick and vacation (annual) leave to reach retirement eligibility. You can also use unused sick and vacation (annual) leave to increase your annuity and still receive a lump sum payment.
- c. Group 2 cannot use unused sick and vacation (annual) leave to reach retirement eligibility. However, you can use unused sick and vacation (annual) leave to increase your annuity and still receive a lump sum payment.
- d. Group 3 cannot use unused sick and vacation (annual) leave to reach retirement eligibility. You must choose between a lump sum payment or to increase your annuity.
- e. For any lump sum payment, taxes will be withheld. Remember, this can put you into a higher tax bracket for the year. A tax advisor can give you more information.

- f. After using unused sick and vacation (annual) leave to reach retirement eligibility and/or to increase your annuity, you may donate any remaining excess hours to the Sick Leave Pool (PD-50, "Sick Leave Pool"), Family Leave Pool (PD-51, "Family Leave Pool"), or an employee who is eligible to receive donated sick leave (PD-46, "Medical and Parental Leave").
 2. Sick and Vacation (Annual) Leave Credit - Retirement Group 4
 - a. Group 4 cannot use unused sick and vacation (annual) leave to reach retirement eligibility or to increase your annuity. Group 4 is not eligible to receive a lump sum payment.
 - b. At the time of retirement, you may donate any remaining excess hours of sick and vacation (annual) leave to the Sick Leave Pool (PD-50), Family Leave Pool (PD-51), or an employee who is eligible to receive donated sick leave (PD-46).
- B. Purchasing Service Credit – Retirement Groups 1, 2, and 3
1. An active or former employee can purchase service credit to meet retirement eligibility sooner, and, in most cases, increase your annuity. When applying purchased service credit, the service credit is added to your years of service, not your age.
 2. Service credit that may be purchased based on eligibility includes:
 - a. Withdrawn Service Credit

If you worked for the state of Texas before and withdrew your retirement account when you left, you can buy back the service credit you withdrew. However, the purchase of withdrawn service credit will not change your retirement group.
 - b. Military Service Credit

If you served in the United States (U.S.) military and are not eligible for full military retirement, you can purchase up to 60 months of active-duty United States military service credit.

c. Waiting Period Service Credit

Not all employees had a waiting period. Most state agency employees who started between September 1, 2003 and August 31, 2015 had a 90-day waiting period before they began contributing to their retirement. You can buy this time to help you retire earlier and increase your annuity. However, you must buy all 90 days of service credit at once.

d. Additional Service Credit (ASC)

You can purchase up to three years of ASC if you have at least 10 years of earned ERS service credit, not including military and unused sick and vacation (annual) leave and have purchased all other service credit available to you. This service credit can be more expensive than other types of service credit.

3. You must purchase service credit before your retirement date. In most instances, the earlier you purchase service credit, the less it will cost you. To get an estimate of how much it will cost to purchase service credit, contact ERS.

C. Purchasing Service Credit – Retirement Group 4

If you worked for the state of Texas before and withdrew your retirement account when you left, you can buy back the service credit you withdrew. This is a one-time purchase and must be completed within 24 months of your rehire date. However, the purchase of withdrawn service credit will not change your retirement group. The other types of service credit are not available to purchase.

D. Other Earned Service Credit

Please refer to ERS for information on Optional Retirement Program (ORP), Proportionate Retirement Program (PRP), or Teacher Retirement System of Texas (TRS).

V. Lump Sum Deferral Option upon Retirement

- A. You can defer your unused vacation (annual) leave and overtime lump sum payment to your Texa\$aver 401(k) or 457 account when you leave state employment. This allows you to defer the tax and turn your lump sum payment into a retirement savings. You must already have an account or open a new one before you leave employment.

- B. Roth contributions allow you to contribute to the TexaSaver 401(k) or 457 plan with after-tax dollars. Traditional contributions are made with pre-tax dollars.

VI. Annuity Advancement Option¹³

You may be eligible to receive a check for up to 36 months of standard annuity payments as a partial lump sum at retirement. If you choose to receive this option, ERS will pay this in addition to your annuity. Selecting the Annuity Advancement Option will permanently reduce your annuity. This payment may also be subject to federal withholding taxes if it is not rolled over to an eligible qualified retirement plan.

VII. Leave Accrual Options

- A. A non-exempt employee may forfeit or exhaust compensatory and holiday accruals prior to their retirement date. A PERS 428 must be completed indicating the option taken for accruals.
- B. An exempt employee may forfeit accruals or utilize up to 336 hours of accrued holiday and compensatory leave to remain on payroll through the last day of the following month. The use of additional hours may be requested; however, division director approval is required. A PERS 428 must be completed indicating the option taken for accruals.

VIII. Disability Retirement¹³

If you become mentally or physically disabled as an active state employee, you may be eligible for disability retirement benefits. Please refer to ERS for details.

IX. Retirement Annuity due to Qualifying Felony Conviction^{1,9}

- A. A TDCJ correctional officer (CO) is ineligible to receive an annuity if convicted of a qualifying felony for conduct while employed. Upon receipt of notice of a qualifying felony conviction from the court, ERS will suspend annuity payments. A CO who is ineligible to receive an annuity is entitled to a refund of the CO's annuity contributions, including interest earned on those contributions.
- B. If the conviction is overturned on appeal or found innocent, the CO is entitled to receive an amount equal to the total contributions and interest withheld during the suspension and may resume receipt of annuity payments.

- C. A spouse convicted with the ERS member can be restricted from receiving any annuities; however, an innocent spouse or ex-spouse awarded the benefits may continue receiving the annuities.

X. Retirement Contribution Options – Leaving State Employment¹¹

If not retiring from state employment, you have options to consider for retirement contributions made. You may not receive credit for unused sick and vacation (annual) leave towards retirement. However, sick and vacation (annual) leave may be restored upon reemployment (PD-46 and PD-49).

A. Option One

If you no longer are employed with the state of Texas, you are not required to withdraw your retirement contributions. You can receive an annuity once you reach the federal retirement age.

B. Option Two

You may receive a refund of your retirement contributions plus accrued interest after you have been separated from employment for a full calendar month and have not returned to state employment. The refund of your retirement contributions cancels your ERS membership and terminates all rights to benefits. If you return to state employment, you will become a new ERS member.

XI. Employee Responsibilities

- A. You must contact ERS at 877-275-4377 or ers.texas.gov for retirement planning, estimates, and completion.
- B. After you have decided upon a retirement date with ERS, immediately notify your human resources representative of your pending retirement. Your human resources representative shall provide you with a Separation Guide and assist you with completing applicable documentation.
- C. If applicable, complete the PERS 428, Compensatory/Holiday Leave Accrual Options and PERS 571, Lump Sum Deferral - Texa\$aver 401(k) and 457 Plans.

XII. Forms / Documents

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

- A. [PERS 428, Compensatory/Holiday Leave Accrual Options](#)
- B. [PERS 571, Lump Sum Deferral - Texa\\$aver 401\(k\) and 457 Plans](#)

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