

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-44 (rev. 9), “RETIREMENT BENEFITS”
OCTOBER 1, 2019

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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

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April 1, 2016

EXECUTIVE DIRECTIVE

SUBJECT: RETIREMENT BENEFITS

AUTHORITY: 26 U.S.C. § 415; Tex. Code Crim. Proc. § 42.0193; Tex. Gov't Code §§ 493.001, 493.006(b), 803.201, 803.203, 810.004, 811.001–814.604, 815.402; 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 retirement program for TDCJ employees is administered by the Employees Retirement System of Texas (ERS).

DEFINITION:

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

"Qualifying Felony" means 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; (h) conspiracy or the attempt to commit any of the offenses described in (a)-(g).

PROCEDURES:

I. Accessing Information

An employee may obtain information pertaining to ERS membership, retirement, including retirement estimates, and other retiree benefits by contacting the ERS directly via the ERS website at <http://www.ers.texas.gov> or the ERS toll-free phone number at 877-275-4377. Retirement booklets, presentation schedules, and other retirement-related information are available on the ERS website.

II. Employee Retirement System Membership and Contributions

A. Full- and part-time employees in positions not covered by another public retirement system are required to be ERS members and contribute a percentage of the employee's eligible monthly pay to the ERS, unless previously retired from state service under the ERS. Independent contractors and consultants are excluded from membership.

B. Effective Employee Retirement System Membership Date

A newly hired or rehired employee, except for an ERS retiree, becomes an ERS contributing member on the first day of employment or reemployment. ERS retirement contribution deductions begin on the employee's first day of employment or reemployment.

C. Earned Interest on Retirement Accounts

All retirement accounts are credited with interest each fiscal year, as set by law, on their account balance. Beginning January 1, 2014, an ERS member earns 2% interest on their retirement account. Interest credited to the employee's retirement account does not affect the amount of the retirement annuity. Accrued interest only affects an employee who separates employment and withdraws contributions.

D. Refund of Contributions upon Separation of Employment

1. An employee may receive a refund of the employee's retirement contributions plus accrued interest after the employee has been separated from employment for a full calendar month and has not returned to state employment. The refund of employee retirement contributions cancels the employee's ERS membership and terminates all rights to benefits. If such an individual returns to state employment, the individual will become a new ERS member when eligibility requirements are met.
2. To request a refund, an employee shall contact the ERS toll-free number at 877-275-4377 or through the ERS website.

3. A separating employee is not required to withdraw retirement contributions; the employee may leave contributions in the employee's account accruing the applicable interest rate. An individual does not have to be an active state employee at the time of retirement to receive an annuity or applicable benefits.

E. Correctional Officer Ineligibility for Retirement Annuity due to Qualifying Felony Conviction

1. A TDCJ correctional officer (CO) is ineligible to receive a service retirement annuity under the ERS if the ERS member is convicted of a qualifying felony for conduct arising directly from the member's service as a CO. Upon receipt of notice of a qualifying felony conviction from the court, the ERS will suspend annuity payments to the CO. A CO who is ineligible to receive a service retirement annuity is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. 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.
2. If the conviction is overturned on appeal or found innocent, the CO is entitled to receive an amount equal to the accrued total of payments and interest withheld during the suspension period and may resume annuity payments to the retirement system.

F. Purchasing Service Credit

An active employee may purchase waiting period service, refunded service, military service, and additional service credit. Information regarding the cost of service credit may be obtained by submitting a request to the ERS by phone, the ERS website, or U.S. mail at Employees Retirement System of Texas, 200 East 18th Street, Austin, Texas 78701.

III. Service Retirement

The three factors that determine eligibility for service retirement are an employee's age, length of state service credited with the ERS, and type of state service credited with the ERS. The two types of creditable service are regular service and Law Enforcement and Custodial Officers System (LECOS) service, also known as supplemental service.

Each year, the ERS provides a Statement of Retirement Benefits to each employee who is a contributing member. This statement is mailed to the employee's home address on file with the ERS following their birthday.

A. Other Service Credit Allowed for Service Retirement

An employee may be eligible to combine other service credit with ERS service to qualify for service retirement through the proportionate retirement program or the optional retirement program.

The proportionate retirement program applies to the following participating retirement systems:

1. ERS;
2. Judicial Retirement System of Texas Plans I and II;
3. Teacher Retirement System of Texas (TRS);
4. Texas Municipal Retirement System (TMRS);
5. Texas County and District Retirement System (TCDRS);
6. City of Austin Retirement System;
7. City of Austin Police Retirement System;
8. El Paso City Employees' Pension Fund; and
9. El Paso Fireman and Policeman's Pension Fund.

B. Leave Credit

1. General Provisions
 - a. Sick Leave Credit

One month of retirement credit will be granted for each 160 hours of unused accrued sick leave. Only one minute in excess of the 160-hour increment is necessary to obtain another month of retirement credit. The employee may donate any remaining excess hours to the Sick Leave Pool, or an employee who is eligible to receive donated sick leave. For example: An employee with 325 hours of accrued sick leave will receive a total of three months retirement credit based on one month for each 160 hour increment plus one month for one accrued minute over 320 hours. The Sick and Vacation Leave Factor Table (Attachment A) indicates how unused accrued sick leave may be credited to an employee's service credit.

b. Vacation (Annual) Leave Credit

One month of retirement credit will be granted for each 160 hours of unused accrued vacation (annual) leave. Only one minute in excess of the first 160 hour increment is necessary to obtain another month of retirement credit. The Sick and Vacation Leave Factor Table indicates how unused accrued vacation (annual) leave may be credited to an employee's service credit.

2. Employees Hired Prior to September 1, 2009

An employee may convert unused accrued sick and vacation (annual) leave to retirement credit to meet length of service retirement eligibility requirements and to increase the employee's retirement credit and the amount of the employee's monthly annuity check. An employee is allowed such retirement credit even though the employee receives a lump sum payment for unused accrued vacation (annual) leave. The employee's separation and retirement must occur in the same month to receive retirement service credit for unused accrued sick and vacation (annual) leave accruals.

These provisions also apply to former employees who left state service before September 1, 2009, and did not withdraw their retirement account from the ERS before being rehired.

3. Employees Hired on or After September 1, 2009, but before September 1, 2013

An employee may use unused accrued sick and vacation (annual) leave to increase the employee's retirement credit and the amount of the employee's monthly annuity check upon retirement. An employee is allowed such retirement credit even though the employee receives a lump sum payment for unused accrued vacation (annual) leave. Sick leave and vacation (annual) leave is accrued as in Sections III.B.1.a and b; however, such leave may not be used to meet the length of service retirement eligibility requirements.

These provisions also apply to former employees who withdrew their retirement account from the ERS and rehired on or after September 1, 2009, but before September 1, 2013.

4. Employees Hired on or After September 1, 2013
 - a. An employee may use unused accrued sick leave to increase the employee's monthly annuity check upon retirement, but not for retirement eligibility.
 - b. Vacation (Annual) Leave Credit
 - (1) If an employee takes a lump sum payment or defers the payment to a TexasSaver 401(k) and 457 Plan for unused accrued vacation (annual) leave, the employee forfeits use of the vacation (annual) leave to increase the employee's monthly annuity check.
 - (2) If an employee does NOT take a lump sum payment, the employee may use the vacation (annual) leave to increase the employee's monthly annuity check.

These provisions also apply to former employees who withdrew their retirement account from the ERS and rehired on or after September 1, 2013.

IV. Disability Retirement

If an active employee becomes mentally or physically disabled, the employee may be eligible for disability retirement benefits. One of the qualifications required by the ERS is the employee must have requested and been denied a workplace accommodation from the employing state agency, and have 10 years of state service. Therefore, before a TDCJ employee applies for disability retirement, the employee shall request a workplace accommodation for a position of comparable pay in accordance with PD-14, "Americans with Disabilities Act and Employment of Persons with a Permanent or Long-Term Medical Condition." The employee should contact the ERS for complete information regarding this requirement and other requirements for disability retirement.

V. Partial Lump Sum Option

An employee may be eligible to choose to receive a check for up to 36 months of standard annuity payments as a lump sum at retirement. Once chosen, a payment from one to 36 months of the standard annuity will be made with the first annuity payment. This payment may be subject to federal withholding taxes if the lump sum is not rolled over to an eligible qualified retirement plan or an Individual Retirement Account (IRA). The standard monthly annuity would then be permanently reduced using established actuarial reduction factors. Selecting the Partial Lump Sum Option will permanently lower the employee's monthly annuity payments.

VI. Retirement Notification

A. Employee Responsibilities

1. The employee shall contact the ERS at 877-275-4377 and speak with a retirement benefits specialist who will assist with the retirement process. The employee shall contact the ERS no earlier than 90 days before the employee's expected retirement date.
2. After the employee has decided upon a retirement date with the ERS, the employee shall immediately notify the human resources representative of the employee's pending retirement.
3. If applicable, the employee shall decide whether to defer all or part of the lump sum payment of unused vacation or overtime into a TexaSaver Plan on the PERS 571, Lump Sum Deferral TexaSaver 401(k) and 457 Plans (Attachment B). If the employee does not have a TexaSaver Plan account, the employee can open one prior to separation from service and defer the lump sum payment.

The employee shall inform the human resources representative on or before the employee's separation date of the employee's intention to defer all or part of the lump sum payment.

B. Human Resources Representative Responsibilities

1. Upon receipt of notification of an employee's retirement effective date, the human resources representative must take the following actions:
 - a. Provide the employee with a Separation Guide.
 - b. Assist the employee in completing the PERS 428, Retiree Leave Accrual Options form (Attachment C). The human resources representative shall explain to the prospective retiree that they are eligible to exhaust all compensatory and holiday accruals, unless the employee indicates an election to forfeit all excess compensatory and holiday leave on the PERS 428.

The human resources representative shall file the original PERS 428 in the employee's unit or department human resources file, Insurance and Retirement Section, and provide a copy of the form to the employee.

- c. Inform the employee, if they return to work as a working retiree within 12 months of their retirement date, sick leave balances will not be restored. At the time of separation, the employee has the option to donate all or a portion of their sick time to the Sick Leave Pool by completing a PERS 205, Sick Leave Pool Contribution, or to an individual employee by completing a PERS 637, Sick Leave Donation form.
 - d. Inform an employee who retires that the employee is not allowed to return to state employment for 90 calendar days.
 - e. If applicable, assist the employee with completion of the PERS 571, Lump Sum Deferral TexasSaver 401(k) and 457 Plans, and immediately fax the PERS 571 to the deferred compensation coordinator, Employee Services, Human Resources Division.
 - f. Complete the TDCJ Payroll/Personnel System (PPS) Employee Retirement Update (RETU) screen using the comments section for any additional information.
 - g. Enter the Payroll Status Change (PSC) in the PPS Payroll Status Change Update (PSCUPD) screen in accordance with the due date established on the payroll schedule for the applicable month of retirement.
2. The human resources representative shall immediately send an email to the Benefits Program Area, Employee Services, Human Resources Division, if an employee cancels or makes a change related to the employee's retirement.

Bryan Collier
Executive Director

Texas Department of Criminal Justice Sick and Vacation Leave Factor Table

The ERS grants creditable service for accrued and unused sick and vacation (annual) leave.

This service may be used to increase the annuity payments. For employees hired prior to September 1, 2009, this service may also be used to satisfy requirements for retirement eligibility.

<i>Employees Retirement System Of Texas (ERS) Creditable Service Granted For Unused Leave Accruals</i>	<i>Required Leave Accrual Range (Stated In Hours & Minutes)</i>
1 Month	160:00
2 Months	160:01 – 320:00
3 Months	320:01 – 480:00
4 Months	480:01 – 640:00
5 Months	640:01 – 800:00
6 Months	800:01 – 960:00
7 Months	960:01 – 1120:00
8 Months	1120:01 – 1280:00
9 Months	1280:01 – 1440:00
10 Months	1440:01 – 1600:00
11 Months	1600:01 – 1760:00
12 Months	1760:01 – 1920:00
13 Months	1920:01 – 2080:00
14 Months	2080:01 – 2240:00
15 Months	2240:01 – 2400:00
16 Months	2400:01 – 2560:00
17 Months	2560:01 – 2720:00
18 Months	2720:01 – 2880:00
19 Months	2880:01 – 3040:00
20 Months	3040:01 – 3200:00
21 Months	3200:01 – 3360:00
22 Months	3360:01 – 3520:00
23 Months	3520:01 – 3680:00
24 Months	*3680:01 – 3840:00
*Employees may be granted more than 24 months creditable service if final accrued sick and vacation (annual) leave balances exceed 3840:00 hours.	

Note: Unused accrued sick and vacation (annual) leave balances must be independently calculated.

Example:

320:22 Unused Vacation (Annual) Leave = 3 Months
 318:45 Unused Sick Leave = 2 Months
 5 Months ERS Creditable Service

Lump Sum Deferral TexaSaver 401(k) and 457 Plans

Payroll Name: _____ **Separation Date:** _____
Social Security Number: _____ **Date of Birth:** _____

I have an existing account or have created an account with Empower prior to my separation/retirement from the state; and I authorize my employer to defer my lump sum salary to my designated account as indicated below in the line provided by each option.

Vacation or Overtime or Both: _____

401(k)	457 Plan(s)
Percentage or Dollar Amount _____	Percentage or Dollar Amount _____
Traditional or Roth _____	Traditional or Roth _____
*Maximum or Specific Percent _____ or Amount	*Maximum or Specific Percent _____ or Amount

*I understand that lump sum payments are subject to Social Security and Medicare taxes even if I defer payment. Therefore, even if I elect to defer lump sum, a portion of the payment will be withheld to cover Social Security and Medicare taxes. The portion that is withheld will also be subject to federal income tax withholdings. This ultimately decreases the total amount that will be tax deferred.

Participant Signature _____ Date _____

Note to Participant: In order to begin processing, all blanks must be completed.

For HR Use Only

Audited by:

HR Rep Printed Name _____ HR Rep Signature _____ Date _____

Initial upon completion:

- _____ All blanks have been completed.
- _____ Faxed to HRHQ Deferred Compensation Coordinator at 936-437-3577
- _____ Confirmed document was received at 936-437-4208
- _____ Copy to Employee
- _____ Copy to Employee Unit or Department Human Resources File, Activity Section

Instructions for Lump Sum Deferral TexaSaver 401(k) and 457 Plans

Payroll Name – Enter your name as it appears with Payroll.

Separation Date – Enter your expected separation/retirement date.

Social Security Number – Enter your full social security number.

Date of Birth – Enter your date of birth.

Vacation or **Overtime** or **Both** – Enter V for vacation; O for overtime; or B for both.

If you are entering for a 401(k) or a 457 Plan(s), the below information will need to be entered for each plan.

Percentage or **Dollar Amount** – Enter either a percentage or dollar amount you want to defer. If you defer a percentage in one plan then you can only identify a dollar amount for the other plan.

Traditional or **Roth** – Enter whether the plan is a Traditional plan or Roth plan.

Maximum or **Specific Percent** or **Amount** – This could be the same as the “Percentage or Dollar Amount” entered above.

**Texas Department of Criminal Justice
Retiree Leave Accrual Options**

Employee Name: _____ Month/Day of Birth: _____
(mm/dd)

Unit/Department: _____

I have notified my human resources representative of my pending retirement. My human resources representative has explained my options regarding my existing state compensatory and holiday leave balances. I hereby elect the following option:

(Initials) **OPTION ONE: Forfeit** State Compensatory and Holiday Leave Accruals
I understand that, by choosing this option, I will lose any state compensatory and holiday leave accruals remaining at the time of my elected retirement effective date indicated below.

Retirement Effective Date (last calendar day of month):

(mm/dd/yyyy)

****or****

(Initials) **OPTION TWO: Exhaust** State Compensatory and Holiday Leave Accruals
I understand that, by choosing this option, my elected retirement effective date will be after all my state compensatory and holiday leave accruals have been exhausted. My elected retirement effective date will be the date indicated below. I also understand that: (1) I must notify the Employees Retirement System of Texas (ERS) in writing if I previously established a retirement effective date with the ERS; and (2) that the election of this option may change that effective date. A PERS 24, TDCJ Leave Request, is required for use of vacation and overtime, and remaining balances will be paid.

Retirement Effective Date (last calendar day of month):

(mm/dd/yyyy)

Employee Signature: _____ Date: _____
(mm/dd/yyyy)

Human Resources Representative 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 File - Insurance and Retirement Section
Copy - Employee