

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**  
**PD-46 (rev. 7), “MEDICAL AND PARENTAL LEAVE”**  
**SEPTEMBER 1, 2018**

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TEXAS DEPARTMENT

OF

CRIMINAL JUSTICE

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**SUPERSEDES:** PD-46 (rev. 6)  
September 1, 2015

## EXECUTIVE DIRECTIVE

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**SUBJECT:** MEDICAL AND PARENTAL LEAVE

**AUTHORITY:** Tex. Fam. Code §§ 2.001–.405; Tex. Gov’t Code §§ 493.001, 493.006(b), 661.001–.922; *Consolidated Omnibus Budget Reconciliation Act*, 29 U.S.C. §§ 1161–1169; *Family and Medical Leave Act*, 29 U.S.C. §§ 2601–2654; *Genetic Information Nondiscrimination Act*, Pub. L. No. 110-233, 122 Stat. 881; 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 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, genetic information, or uniformed services status. 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:**

“Applicable Leave” is 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” means as soon as can reasonably be accomplished, taking into account all facts and circumstances in the individual case.

“Care for a Military Member” (Military Caregiver Leave) is 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.

“Child” means a 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.”

“Consolidated Omnibus Budget Reconciliation Act” (COBRA) is a 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).

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

“Educational Activities,” for the purpose of this directive, are 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.

“Emergency Response Situation” is an emergency situation that presents an immediate or potential threat to public safety as determined by a warden or department head.

“Essential Functions” means a position’s fundamental job duties that an applicant or employee is required to be able to perform with or without a reasonable accommodation.

“Family,” 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) is 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.

“FML Certification,” for the purpose of this directive, is written documentation supporting an employee’s need for leave. Types of acceptable certification include:

- a. Medical certification or health care provider statement (HCPS), issued to the employee or a covered family member that documents a serious health condition;
- b. DOL form;
- c. Documentation supporting a qualifying exigency or military orders; or
- d. Proof of event.

“Health Care Provider,” for the purpose of this directive, 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, or a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts. 29 C.F.R. § 825.125

“Health Care Provider’s Statement” is a written statement from an attending health care provider that identifies: (a) the medical fact(s) 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. An electronic signature must include the statement “electronically signed.”

“Immediate Family,” for the purpose of taking accrued sick leave that is not designated as FML or for taking extended sick leave or LWOP-Medical, means 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 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” means “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” is FML taken in separate blocks of time due to a single qualifying reason.

“Licensed Practitioner” is a doctor of medicine or doctor of osteopathy, other than a hospital resident or intern, who is acting within the scope of license.

“Licensed Practitioner’s Statement,” for the purpose of this directive, is a statement of the attending licensed practitioner that contains the description of the catastrophic injury or illness, date of the onset or initial diagnosis, prognosis for recovery, and anticipated date of return to active duty. If the statement is for the care of an immediate family member, it shall also include the type and duration of assistance required from the employee and the projected date of recovery. This statement shall be dated within 30 days of the requested leave.

“Marriage” 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, 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.



“Medical Fact” is a description of a condition that identifies the nature of the injury or illness, or procedure that identifies an affected body part. Examples include: viral illness, back pain, upper respiratory infection, appendectomy, or tonsillectomy. Terms such as “under my care,” “surgery,” or “stress” are not acceptable as a medical fact. A medical fact does not require a diagnosis.

“Military Member” is: (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 aforementioned five-year period.

“Next of Kin of a Military Member,” for the purpose of this directive, is 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,” for the purpose of this directive, includes accrued sick, vacation, holiday, compensatory, overtime, and any donated sick leave or administrative leave.

“Parent” is 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.”

“Parent of a Military Member” is a biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member.

“Physically Worked” means 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” is documentation of the occurrence of a particular event involving a specific person.

“Reduced Leave Schedule” is 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 for a period of time.

“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 of a temporary or permanent nature; 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 an HCPS. However, a release to return to work does not automatically meet the requirements to be an HCPS. 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.

“Rolling 12-Month Period,” for the purpose of this directive, is: (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,” 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.

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 or long-term 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.
- 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," 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" is a leave status available to employees when injury, illness, pregnancy, or 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" means a person to whom a person is legally married.

"State Parental Leave" is 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 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," for the purpose of this directive, means a day when an employee is normally scheduled to work.

"Workweek" means: (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."

An employee who fails to comply with the procedures within this directive, unless it is not possible under the particular circumstances to do so despite the employee's diligent, good faith efforts, may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or administrative separation in accordance with PD-24, "Administrative Separation," if the employee is still in a leave status.

## **PROCEDURES:**

### **PART A: FAMILY AND MEDICAL LEAVE**

#### **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. 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.

D. 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.

E. 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.

F. 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, 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 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 FML denied and be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or administrative separation in accordance with PD-24, "Administrative Separation," if the employee is still 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 an HCPS 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 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. A PERS 301, Notification of Family and Medical Leave (Attachment A), and the appropriate DOL form, if applicable, shall be mailed to an employee no later than the fifth workday following the employee's initial request for leave.

The employee has 15 calendar days from the mailing date of a PERS 301, or 15 calendar days from notification of the need for recertification, to provide to the employee's supervisor a PERS 24, Leave Request (Attachment B), with the supporting FML certification or proof of event.

5. Upon receipt of a PERS 592, Request for Additional Information or Recertification (Attachment C), the employee shall provide the requested documentation within 15 calendar days from the mailing date of the PERS 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 FML certification, proof of event, 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 or proof of event 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 a PERS 301, and obtaining the employee's signature or mailing the PERS 301 to the employee via first class mail within five workdays of the employee's initial request for leave. A copy of the PERS 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, mail a PERS 301, to the employee, 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 a PERS 301, attach a PERS 24, *The Genetic Information Nondiscrimination Act of 2008 (GINA)* statement, and the appropriate DOL form, if applicable, 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) Document the date the PERS 301 was mailed to the employee in the Payroll/Personnel System (PPS) FML Letter Tracking History (FMLLS) screen. A copy of the PERS 301 shall be placed in the employee's medical file. The PERS 301 is valid for 12 months for the same qualifying reason.
- c. Upon receipt of the PERS 24 and FML certification or proof of event, confirm the FML certification is complete.
- (1) If the FML certification or proof of event is not received within 15 calendar days, FML is denied and the human resources representative shall begin administrative separation procedures in accordance with PD-24, "Administrative Separation."
  - (2) If the FML certification is received, but insufficient, the human resources representative shall complete a PERS 592 and provide it to the employee within two workdays.

If the completed FML certification or proof of event is not received within 15 calendar days from the mailing date of the PERS 592, FML is denied and the human resources representative shall begin administrative separation procedures in accordance with PD-24, "Administrative Separation."

If the FML certification is received but is still insufficient, the employee shall be notified that the certification is still insufficient and shall have until the date identified on the PERS 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, "Administrative Separation."

## 2. Designation of Family and Medical Leave

Within five workdays of receiving the completed FML certification or proof of event, the human resources representative shall complete a PERS 594, Designation Notice (Attachment I), and provide it 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 FML certification, the human resources representative shall notify the employee verbally or by providing a PERS 592 within two workdays after the expiration of the original FML certification that an additional FML certification is required within 15 calendar days. Regardless of the method used, the notification shall be documented on the FMLLS screen.

If the human resources representative unsuccessfully attempted verbal notification, the human resources representative shall mail a PERS 592 to the employee and document the date mailed on the FMLLS screen.

4. Intermittent Leave or Reduced Leave Schedule

If an employee eligible for FML submits FML 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 send a PERS 594 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. 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 LEAVE**

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.

III. Use of Applicable Leave

A. An employee shall first use all available and applicable accrued paid vacation, sick, and donated sick leave while taking state parental leave, prior to going on LWOP. The use of sick leave is strictly limited to those situations clearly falling within the definition of a sick leave event. An employee who is the parent of a child may use sick leave while taking state parental leave only if the child is actually ill or the leave is required to care for the employee's spouse during recovery from labor and delivery.

B. 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 proof of the event to the PERS 24;
- C. Furnish an HCPS to support the use of sick leave, if applicable; and
- D. 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 or Denial of State Parental Leave

If an employee exhausts or is denied 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 LEAVE**

I. Leave Accrual and Availability

- A. A full-time permanent or temporary 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 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, including donated sick leave.

B. Use of Sick Leave for Pregnancy and Childbirth

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.

The parent of a child may use sick leave for a child's birth only if the child is actually ill or if the leave is required to care for the employee's spouse during recovery from labor and delivery.

C. Use of Sick Leave for Educational Activities

A parent, step-parent, 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.



#### 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 as a result 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 an HCPS 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 an HCPS 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 an HCPS 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 an HCPS, unless the leave is intermittent FML due to a chronic serious health condition for which an HCPS has already been submitted. See Part A, Section II.C.4.

An employee who fails to follow the procedures relating to providing a timely HCPS may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or administrative separation in accordance with PD-24, "Administrative Separation," if the employee is still in a leave status.

1. Initial Health Care Provider's Statement

If the employee did not provide a PERS 24 and an HCPS prior to taking sick leave, the employee has 15 calendar days from the date the PERS 301 is mailed to submit the HCPS and the PERS 24 to the employee's supervisor.

- a. If the documentation submitted is not complete, the employee will be provided a PERS 592.
- b. The employee shall provide the required documentation within 15 calendar days from the mailing date of the PERS 592.

The HCPS may support a period of absence up to six months. However, if the submitted HCPS does not indicate an end date, the statement is valid for 30 calendar days from the date of the HCPS.

2. Recertification

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

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 FML certification, proof of event, 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.

- 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 an HCPS prior to taking leave, the human resources representative shall, within five workdays of the employee's initial request for leave:

1. Send the employee via first class mail a PERS 301 indicating that the employee will be placed on sick leave that is not FML eligible, and a PERS 24;
2. Begin administrative separation procedures in accordance with PD-24, "Administrative Separation," if an HCPS is not received within 15 calendar days; or
3. Complete a PERS 592 and provide it to the employee within two workdays if the HCPS is received, but insufficient.

If the HCPS is received but still insufficient, the human resources representative shall notify the employee that the certification is still insufficient and allow the employee the remainder of the original 15 calendar days to provide a complete certification. If an HCPS is still not received by the required date on the PERS 592 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, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

### B. Exhaustion of Accrued Sick Leave

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

1. Place the employee in another 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 LEAVE**

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 may verbally instruct the employee to furnish an HCPS.

A. If the employee was absent for three consecutive workdays or less, the verbal request to provide an HCPS shall be followed by a PERS 301 provided or mailed to the employee no later than the fifth workday following the employee's initial request for leave. If the employee fails to provide a timely HCPS, the supervisor may initiate disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

B. If the employee was absent for more than three consecutive workdays, the employee shall provide the HCPS 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 in PERS 604, Guidelines for a Pattern of Misuse of Sick Leave (Attachment J). 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 (Attachment K). The PERS 499 requires the employee to submit an HCPS for all absences based on a claim of injury or illness during the specified 180 calendar day period.

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 HCPS.

B. Initiating Disciplinary Action

The supervisor may initiate appropriate disciplinary action in accordance with PD-22 during the 180 calendar day period specified on the provided PERS 499, if the employee does not submit an HCPS by the deadline identified on the PERS 301. 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 HCPS in accordance with Part C, Section IV.C of this directive.

**PART E: DONATION OF SICK LEAVE HOURS**

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.
- F. The use of donated sick leave counts towards an employee's FML job-protected leave entitlement.
- G. Any vacation and sick 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, Sick Leave Pool,” if applicable, and, if the application was approved, used available sick leave pool hours; and
  3. Provide a licensed practitioner’s statement containing a description of the catastrophic injury or illness, date of the onset or initial diagnosis, a prognosis for recovery, and anticipated date of return to active employment.
- B. Eligibility to receive donated sick leave shall be verified through the Leaves Program Area, Employee Services, 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 (Attachment L), 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;
- 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; and
- F. Acknowledge that the value of the donated sick leave may be taxable, and that it is the employee’s responsibility to discuss any questions or concerns about possible tax implications with the employee’s tax advisor.

### 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 licensed practitioner's statement containing a description of the catastrophic injury or illness, date of the onset or initial diagnosis, a prognosis for recovery, and anticipated date of return to active employment.

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 Program Area, Employee Services, Human Resources Division for processing.

VI. Exhaustion of Donated Sick Leave

Upon the exhaustion of donated sick leave, the employee may apply for extended sick leave, if eligible. If ineligible for extended sick leave or upon exhaustion or denial of extended sick leave, the employee shall be placed in an appropriate LWOP status or separated for exhaustion of leave entitlements.

VII. Return to Work

A. After using donated sick leave an employee shall report to work on the next regularly scheduled workday. 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 statement from a licensed practitioner containing:

1. A description of the catastrophic injury or illness for which the donated hours were granted;
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 12 workweeks.

- 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 an HCPS;
- 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;
- 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; and
- F. Not have received 12 workweeks of extended sick leave from the TDCJ in the past five years.

## 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 an HCPS. 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 HCPS.



- B. The warden or department head shall forward the PERS 24 and HCPS 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 HCPS to the appropriate warden or department head. 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 PAY-MEDICAL OTHER THAN LEAVE WITHOUT PAY-FAMILY AND MEDICAL LEAVE OR LEAVE WITHOUT PAY-STATE PARENTAL**

I. General Provisions

An employee may request LWOP-Medical 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-Medical 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-Medical, unless the employee is on workers' compensation and has frozen part or all of the employee's accrued leave.

B. Maximum Leave Without Pay-Medical Calendar Days

- 1. The maximum number of days an employee may take for any combination of LWOP entitlements and approved leave 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. See PD-49, “Leaves Other than Medical and Parental.”
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 of LWOP-FML, LWOP-Medical, LWOP-State Parental, and LWOP-Other.
  6. The Payroll/Personnel System (PPS) LWOP History (LWOP2) screen identifies:
    - a. The total combined LWOP-FML, LWOP-Medical, 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-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.
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, "Leaves Other than Medical and Parental."

C. Insurance Coverage While on Leave Without Pay-Medical

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.

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

An employee on LWOP-Medical 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 from LWOP-Medical, the employee shall contact the human resources representative regarding insurance reinstatement options.

II. Employee Responsibilities

An employee who fails to follow the procedures relating to providing a timely HCPS may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or administrative separation in accordance with PD-24, "Administrative Separation," if the employee is still in a leave status.

A. Initial Application for LWOP-Medical

1. An employee requesting LWOP-Medical shall provide the following to the employee's supervisor:
  - a. A current HCPS; and

- b. A PERS 24 with Section III completed, requesting leave for the period identified on the HCPS, up to six months.
  2. If the employee did not provide the required documentation prior to being placed in an LWOP-Medical status, the employee shall provide the documentation within 15 calendar days of the mailing date of the PERS 301.
    - a. If the submitted documentation is not complete, the employee shall be provided a PERS 592.
    - b. The employee shall provide the required documentation by the date indicated on the PERS 592.

B. TDCJ Issued Equipment

An employee taking LWOP-Medical 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-Medical after an absence of three workdays or less has 15 calendar days to provide an HCPS supporting the LWOP period.
2. An employee's responsibilities upon return to work from LWOP-Medical 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-Medical, the employee's supervisor shall submit the PERS 24 with the supporting HCPS to the human resources representative.

IV. Human Resources Representative Responsibilities

When an employee requires use of LWOP-Medical, 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 of calendar days of LWOP-Medical 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 LWOP-Medical - Work Related or Non-Work Related; and
2. Complete and mail a PERS 301, if not previously mailed for the current period of sick leave.
  - a. If the employee fails to provide required documentation to support a period of LWOP-Medical, begin disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or begin administrative separation procedures in accordance with PD-24, "Administrative Separation," if the employee is still in a leave status.
  - b. If the documentation is received, but insufficient, complete a PERS 592 and provide it to the employee within two workdays.

If the completed FML certification or proof of event is not received by the required date on the PERS 592, or is received but still insufficient, begin disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if the employee has returned to work, or begin administrative separation procedures in accordance with PD-24, "Administrative Separation," if the employee is still 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, via the HR\_SEPARATE eform for review and concurrence prior to separating the employee for expiration of LWOP; and
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 PSC screen to the employee accompanied by a PERS 302, Expiration of Leave Without Pay Notification (Attachment M), 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-Medical 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, “General Rules of Conduct and Disciplinary Action Guidelines for Employees,” if the employee has returned to work, or initiating administrative separation in accordance with PD-24, “Administrative Separation,” if the employee is still in a leave status. Non-compliance includes:
  1. Failure to follow procedures relating to providing a timely HCPS; or
  2. An absence not covered by an approved LWOP-Medical request.
- B. Initiate the appropriate action for exhaustion of LWOP-Medical 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.

B. Family and Medical Leave (FML) Certification, Health Care Provider’s Statement (HCPS), or Proof of Event

The employee shall submit FML certification, an HCPS, or proof of event supporting the period of absence from work, if such supporting documentation was not previously provided. The employee has the remainder of the 15 calendar

day period from when the PERS 301 was mailed, to provide supporting documentation.

If an employee fails to provide FML certification, an HCPS, or proof of event, in accordance with these procedures, the employee may be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

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 that was cancelled due to non-payment while taking LWOP.

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

If the employee's release to return to work is unconditional but does not meet the criteria of an HCPS supporting the period of absence, the employee is allowed to 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-Medical, enter a PSC indicating the employee's return to work.

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

B. Family and Medical Leave Certification, Health Care Provider's Statement, or Proof of Event

1. If the FML certification, HCPS, or proof of event is not received within 15 calendar days, the human resources representative shall begin disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

2. If the FML certification, HCPS, or proof of event is received, but insufficient, the human resources representative shall complete a PERS 592 and provide it to the employee within two workdays.

If the completed FML certification, HCPS, or proof of event is not received by the date on the PERS 592, or is received but still insufficient, the human resources representative shall begin disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

C. Permanent Medical Conditions

If an employee's release to return to work, certification, or HCPS identifies a physical or mental restriction as a permanent 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, Employee Relations, Human Resources Division, in accordance with PD-14, "Americans with Disabilities Act and Employment of Persons with a Permanent or Long-Term Medical Condition."

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, 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, 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, "Employee Transfers and Reassignments," for a period of time 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. Failure to Provide Family and Medical Leave Certification, Health Care Provider's Statement, or Proof of Event upon Return to Work

If an employee returns to work and does not provide FML certification, HCPS, or proof of event as required in this directive, the warden or department head shall initiate disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

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Bryan Collier  
Executive Director

**Texas Department of Criminal Justice  
Notification of Family and Medical Leave**

Employee Name				Date
Last	First	MI	(mm/dd/yyyy)	
Employee Mailing Address				Payee ID Number
Street or P.O. Box	City	State	Zip Code	

You requested leave for the following reason on \_\_\_\_\_ :  
mm/dd/yyyy

- The birth of a child, or the placement of a child with you for adoption or foster care;
- Your own serious health condition;
- Because you are needed to care for your  spouse  child or  parent due to a serious health condition;
- Because of a qualifying exigency arising out of the fact that your  spouse  child or  parent is on covered active duty or called to a covered active duty status in support of a contingency operation; or
- Because you are the  spouse  child  parent or  next of kin caring for a military member with a serious injury or illness.

**This notice is to inform you that:** (Check applicable boxes)

- You are eligible for family and medical leave (FML)**  
You meet the eligibility requirements for taking FML and still have FML available in the applicable 12-month period. If sufficient information is not provided in a timely manner, your FML may be denied.
- You are not eligible for FML, because:**
  - You have not met the *Family and Medical Leave Act (FMLA)*'s 12-month length of service requirement;
  - You have not met the FMLA's 1,250 hours worked requirement;
  - You have exhausted your FML entitlement in the current 12-month period.
- You are eligible for sick leave, not FMLA eligible.**
- You are eligible for state parental leave following the date of birth of your child or placement of a child for adoption or foster care.** Proof of the event is required.

You must return the certification for your leave by: \_\_\_\_\_  
mm/dd/yyyy

Your available leave balances, as of the end of the previous month, are:

Vacation: \_\_\_\_\_ Sick: \_\_\_\_\_ Donated Sick Leave: \_\_\_\_\_  
Holiday: \_\_\_\_\_ Overtime: \_\_\_\_\_ Compensatory: \_\_\_\_\_

**You will be or have been placed in a leave without pay (LWOP) status effective** \_\_\_\_\_  
mm/dd/yyyy

The maximum number of LWOP calendar days an employee may take for any combination of LWOP-FML, LWOP-Medical, LWOP-State Parental, and LWOP-Other is 180 calendar days within a rolling 12-month period unless the employee is eligible for state parental leave or FML when the 180 calendar day limit is exhausted.

As of the date of this notification you had \_\_\_\_\_ calendar days of LWOP remaining. It is your responsibility to communicate with your human resources representative and to know when your available days of LWOP will exhaust.

**General Provisions:**

- \* It is your responsibility to obtain and submit required documentation to remain in an approved leave status. Your failure to submit proper documentation as required by policy may be cause for disciplinary action or separation from employment.
- \* You are required to notify your supervisor if your leave changes, becomes extended, or was initially unknown.
- \* You are required to use your available accrued paid leave during your absence. Unless otherwise instructed by you, donated sick leave will be applied. For an FMLA absence, your paid leave and unpaid leave shall be counted against your FML entitlement.
- \* You are required to furnish a PERS 24, Leave Request, and the FML certification, if the leave is designated as FML.
- \* If the leave is state parental leave, you are required to furnish a PERS 24 and proof of event.
- \* If the leave is non-FML, you are required to furnish a PERS 24 and a dated health care provider’s statement (HCPS) from the attending health care provider that contains the medical facts associated with the injury or illness and the expected duration of the injury or illness within 15 calendar days of the date this notification was provided to you in person or mailed. In addition:
  - a. If the statement is for the care of a family member, it must also include the type and duration of assistance required from you.
  - b. The HCPS must support the duration of time requested, not to exceed six months.
  - c. If a serious health condition requires leave that extends beyond your original HCPS, you are required to furnish another statement no later than 15 calendar days following the expiration of the previous request.
- \* If your spouse is employed with the Texas Department of Criminal Justice (TDCJ) and you are both requesting leave for a reason in which the FML protected leave is required to be shared, you must notify your human resources representative.
- \* If your leave will be on an intermittent or a reduced leave schedule, you may be required to provide a release at times not described below.
- \* If leave was taken for your own serious health condition, and you were absent for more than three consecutive workdays, you are required to present an HCPS release to return to work. If such statement is required but not received, your return to work shall be delayed until this statement is provided. If any permanent restrictions or limitations are listed on the release to work, your return to work shall be governed by PD-14, “Americans with Disabilities Act and Employment of Persons with a Permanent or Long-Term Medical Condition.”
- \* **If you normally pay a portion of the premiums for your health insurance, these payments shall still be required during any period of LWOP-FML, to include tobacco usage premiums. You shall have 30 calendar days from the date you were placed in LWOP to make eligible changes to your insurance or TexFlex coverage.** If your spouse is a state employee, you and your covered dependent(s) may be eligible to be placed on your spouse’s insurance coverage. You must contact your human resources representative to make any eligible insurance or TexFlex changes. You shall receive notification from the Employees Retirement System of Texas (ERS) regarding total monthly premiums due. Upon your return to work from FML, your full coverage shall be reinstated to the level held at the time LWOP began. If you do not return to work following FML for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle you to FML; or (2) other circumstances beyond your control, you may be required to reimburse the TDCJ for the portion of health insurance premiums paid by the TDCJ on your behalf during your FML.

**If your leave qualifies as FML, you will have the following rights while on FML:**

- \* You have a right under the FMLA for up to 12 workweeks of unpaid leave in a 12-month period calculated as a “rolling” 12-month period measured backward from the date of any FML usage.
- \* You have a right under the FMLA for up to 26 workweeks of unpaid leave in a single 12-month period to care for a military member with a serious injury or illness. This single 12-month period commenced on: \_\_\_\_\_  
mm/dd/yyyy
- \* Your health insurance benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- \* You must be reinstated to the same or an equivalent job with the same pay, benefits and terms and conditions of employment on your return from FML. If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under the FMLA.

**Once we obtain the information from you as specified above, we will inform you, within five workdays, whether your leave will be designated as FML entitlement. If you have questions, please contact the human resources representative below.**

**HUMAN RESOURCES REPRESENTATIVE:**

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
(Please Print)

Signature: \_\_\_\_\_ Signature date (mm/dd/yyyy): \_\_\_\_\_

Date Mailed (mm/dd/yyyy): \_\_\_\_\_

**If signed in person:**

Employee Signature: \_\_\_\_\_ 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.



**Texas Department of Criminal Justice  
Request for Additional Information or Recertification**

Employee Name				Date
Last	First	MI	(mm/dd/yyyy)	
Employee Mailing Address				Payee ID Number
Street or P.O. Box	City	State	Zip Code	

Attached is a copy of the certification the TDCJ received on \_\_\_\_\_ in support of your request for leave.  
mm/dd/yyyy

The information provided was not complete for certification. Additional information is needed to determine if your leave request can be approved.

Specific information needed to make the certification complete and sufficient:

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The original family and medical leave (FML) certification has expired. A recertification is required.

You must furnish this additional information or recertification within 15 calendar days of the date of this notification which will be: \_\_\_\_\_.  
mm/dd/yyyy

If you do not furnish this information, your leave may be denied and you may be disciplined in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," if you have returned to work, or separated in accordance with PD-24, "Administrative Separation," if you are still in a leave status.

**HUMAN RESOURCES REPRESENTATIVE:**

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
(Please Print)

Signature: \_\_\_\_\_ Signature date: \_\_\_\_\_  
mm/dd/yyyy

Date Mailed: \_\_\_\_\_  
mm/dd/yyyy

**If signed in person:**

Employee Signature: \_\_\_\_\_ 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.

**Texas Department of Criminal Justice  
DOL FORM WH-380-E**

An employee taking family and medical leave (FML) for their **own** serious health condition may obtain the “Certification of Health Care Provider for Employee’s Serious Health Condition (*Family and Medical Leave Act*),” Form WH-380-E from the U.S. Department of Labor website: <http://www.dol.gov>. Print both this attachment and the DOL form.

G.I.N.A. Statement:

*The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, the genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistance reproductive services (75 Fed. Reg. 68934).*

An employee’s human resources representative may also access and print the form and the GINA statement for the employee.

**Texas Department of Criminal Justice  
DOL FORM WH-380-F**

An employee taking family and medical leave (FML) for the serious health condition of a **family member** may obtain the “Certification of Health Care Provider for Family Member’s Serious Health Condition (*Family and Medical Leave Act*),” Form WH-380-F from the U.S. Department of Labor website: <http://www.dol.gov>. Print both this attachment and the DOL form.

G.I.N.A. Statement:

*The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, the genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistance reproductive services (75 Fed. Reg. 68934).*

An employee’s human resources representative may also access and print the form and the GINA statement for the employee.

**Texas Department of Criminal Justice**  
**DOL FORM WH-384**

An employee taking family and medical leave (FML) for **military exigency leave** may obtain the “Certification of Qualifying Exigency for Military Family Leave (*Family and Medical Leave Act*),” Form WH-384 from the U.S. Department of Labor website: <http://www.dol.gov>.

An employee’s human resources representative may also access and print the form for the employee.



**Texas Department of Criminal Justice**  
**DOL FORM WH-385**

An employee taking family and medical leave (FML) to care for a military member may obtain the “Certification for Serious Injury or Illness of Current Servicemember – for Military Family Leave (*Family and Medical Leave Act*),” Form WH-385 from the U.S. Department of Labor website: <http://www.dol.gov>.

An employee’s human resources representative may also access and print the form for the employee.

**Texas Department of Criminal Justice**  
**DOL FORM WH-385-V**

An employee taking family and medical leave (FML) to care for a military veteran may obtain the “Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (*Family and Medical Leave Act*),” Form WH-385-V from the U.S. Department of Labor website: <http://www.dol.gov>.

An employee’s human resources representative may also access and print the form for the employee.

Texas Department of Criminal Justice  
Designation Notice

Employee Name				Date
Last	First	MI	(mm/dd/yyyy)	
Employee Mailing Address				Payee ID Number
Street or P.O. Box	City	State	Zip Code	

We have received your request for leave under the *Family and Medical Leave Act* (FMLA) and supporting documentation that you provided on \_\_\_\_\_ and decided: \_\_\_\_\_

**Your family and medical leave (FML) request is approved. All leave taken for this reason will be designated as FMLA leave.**

**Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:**

Provided there is not deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: \_\_\_\_\_

Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period, if leave was taken in the 30-day period.

**Please be advised:**

We are requiring you to use paid leave during your FML, unless you have chosen to freeze your time in relation to a workers' compensation claim or you are currently receiving disability income benefits. Any paid leave taken for this reason will count against your FML entitlement.

If you have been on leave for more than three consecutive workdays due to your own injury or illness, you must provide a release to return to work to your supervisor.

If your leave will be on an intermittent or a reduced leave schedule, you may be required to provide a release at times not described above.

**We have decided to delay FML for the dates beginning \_\_\_\_\_ and ending \_\_\_\_\_, due to your failure to follow written call-in procedures.**

**Your FML will begin/resume, effective \_\_\_\_\_.**

**Your FML request is not approved.**

**The FMLA does not apply to your leave request.**

**Your FML entitlement was exhausted as of: \_\_\_\_\_**

**HUMAN RESOURCES REPRESENTATIVE:**

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
(Please Print)

Signature: \_\_\_\_\_ Signature Date: \_\_\_\_\_  
mm/dd/yyyy

Mail 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.**

## Texas Department of Criminal Justice Guidelines for a Pattern of Misuse of Sick Leave

The following guidelines for the determination of a “pattern” as evidence of misuse of sick leave have been established to ensure consistent application of Part D of PD-46, “Medical and Parental Leave.”

State statute and agency policy defines the circumstances under which an employee may be required to provide a doctor’s certificate. However, if there is substantial evidence that an employee is *not* entitled to use sick leave, such as an identified pattern of absences, the employee may be required to provide a doctor’s note to support the absences, as specified under the provisions of “misuse of sick leave.”

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A pattern of absences, at least monthly, that may support evidence of misuse of sick leave, includes, but is not limited to the following:

- On a day or days there is substantial evidence tending to establish the employee was not entitled to use sick leave, such as attendance at sporting or social events or working outside employment during the employee’s scheduled work hours.
  - On the employee’s first or last workday of the work cycle.
  - On Saturdays, Sundays, or holidays.
  - On the first work cycle of the month.
  - On a given day of the week or month.
  - On days preceding or following vacation leave.
- 

The human resources representative shall verify that the documented dates of unscheduled use of leave were not certified as family and medical leave (FML) or supported by a health care provider’s statement (HCPS) on a PERS 499, Notification of Unscheduled Use of Leave Pattern.

An employee that receives a PERS 499 shall obtain an HCPS, in accordance with this directive, for any absences based on a claim of injury or illness, regardless of the length of absence.

**Texas Department of Criminal Justice**  
**NOTIFICATION OF UNSCHEDULED USE OF LEAVE PATTERN**

(Note to supervisor: This form is only to be used when requiring documentation for future absences because there is a pattern of unscheduled use of leave based on claims of injury or illness.)

**Employee Name:** \_\_\_\_\_ **Payee ID**  
Last First MI **Number:** \_\_\_\_\_

During the previous three-month period, your employee time reports indicate a pattern of unscheduled use of leave based on claims of injury or illness that were not certified as family and medical leave (FML) and were not supported by a health care provider's statement (HCPS). The dates of unscheduled leave and the description of the pattern are documented below.

In accordance with sound business practices and in order to ensure correct use of sick leave, you will be required for the next 180 calendar day period, from \_\_\_\_\_ to \_\_\_\_\_, to obtain an HCPS for any absences based on a claim of injury or illness regardless of the length of absence. Failure to furnish such statements to your supervisor for each absence that is based on a claim of injury or illness during this 180 calendar day period will result in disciplinary action. A statement must be provided in accordance with the applicable procedures in this directive.

**Dates of Unscheduled Use of Leave**

The dates of unscheduled use of leave may be less than nine dates. If more than nine dates, attach a list of the additional dates.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Description of Unscheduled Use of Leave Pattern**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Human Resources Representative:** I confirm that the documented dates of unscheduled use of leave were not certified as FML or were not supported by an HCPS.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Supervisor Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Warden or Department Head Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

I have read and received a copy of this Notification and understand that a copy of this notification will be placed in my unit or department medical file.

**Employee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**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 - Employee Unit or Department Medical File  
Copy - Employee

Texas Department of Criminal Justice  
Sick Leave Donation

**To be Completed by Employee ONLY – Form must be handwritten**

Name: \_\_\_\_\_ Month/Day of Birth: \_\_\_\_\_  
Please Print: Last First MI (mm/dd)

Unit/Dept: \_\_\_\_\_ Payee ID Number: \_\_\_\_\_

1. Current Accrued Sick Leave Balance: \_\_\_\_\_

2. Number of hours **DONATING** to Receiving Employee: \_\_\_\_\_

3. Sick Leave Donated to: \_\_\_\_\_  
Name Unit or Department Month/Day of Birth (mm/dd)

Please initial:

\_\_\_\_\_ I acknowledge that donated leave will be deducted from my sick leave balance and will not be available for my use.

\_\_\_\_\_ I acknowledge that donated sick leave hours unused by the recipient will not be returned to my available balance.

\_\_\_\_\_ I acknowledge that the donation is final and will not be changed or modified once the donation has been made.

\_\_\_\_\_ I acknowledge that I have not received compensation or a gift in exchange for donating sick leave hours.

\_\_\_\_\_ I acknowledge I have not been threatened or coerced into donating sick leave hours.

\_\_\_\_\_ I acknowledge that the value of donated sick leave may be taxable, and if I have any questions or concerns about what this means, it is my responsibility to consult with my tax advisor.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date (mm/dd/yyyy)

**In order for an employee to be eligible to receive donated sick leave, all accruals must be exhausted and the leave must be used for a catastrophic injury or illness.**

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**For Agency Use Only:**

HR Representative Name and Unit:			
Receiving Employee Notified:	Date:	Time:	Agreed to Donation: <input type="checkbox"/> Does Not Agree to Donation: <input type="checkbox"/>
Receiving Employee Unable to be Notified After a Minimum of Three Attempts:	Date:	Time:	Result:
HRHQ Transferred Hours:	Date:	Time:	Initial:

Distribution:

Fax copy to Leaves Program Area, Employee Services, Human Resources Division at (936) 437-4140

Copy: Employee

**Texas Department of Criminal Justice  
 Expiration of Leave Without Pay Notification**

Employee Name			Date
Last	First	MI	mm/dd/yyyy
Payee ID Number			
Employee Mailing Address			
Street or P.O. Box	City	State	Zip Code

Attached is a copy of the electronic payroll transaction which indicates your leave without pay has expired. If you are able to return to TDCJ employment at a later date, you must apply through the Employment Section, Human Resources Division.

If you are eligible for continuation of your health insurance coverage through the provisions set forth by the *Consolidated Omnibus Budget Reconciliation Act (COBRA)*, the Employees Retirement System of Texas (ERS) will mail information relating to this option to your home address. If you have any questions regarding your COBRA continuation rights, you should contact the ERS at 1-877-275-4377.

HUMAN RESOURCES REPRESENTATIVE:

\_\_\_\_\_  
 Name (Printed)

\_\_\_\_\_  
 Signature

( ) \_\_\_\_\_  
 Phone Number

\_\_\_\_\_  
 Date (mm/dd/yyyy)

Attachment(s)

Distribution:

Original - Employee

Copy - Employee Unit or Department Human Resources File, Payroll Section