



Proposed Personal Leave Frequently Asked Questions

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1. What is Personal Leave?

Personal Leave, also known as Paid Time Off (PTO), is a consolidation of separate accruals for sick and annual leave into one Personal Leave bank. Personal leave can be used for any reason.

2. Why is a Personal Leave policy being considered now?

The Division of Human Resources has been evaluating leave trends in the market over the past 10 years and has gotten requests from employees for more modern leave policies. In addition, changing to Personal Leave was a recommendation made by an outside auditor to the Legislative Audit Committee in the 2003 *Total Compensation Survey* Audit. The State's current leave package is a piecemeal collection of separate policies that have been implemented through the years without an integrated review. Many of the current leave policies are not in alignment with the State's total compensation direction and market trends.

Current leave policies are one of the most complex areas for the State to manage and administer. The amount of time spent on tracking, administering and managing leave is an inefficient use of resources and no longer provides any value. The concept of "sick leave" was originally designed as an insurance policy that has since been replaced by coverage options such as the Family Medical Leave Act (FMLA), Short-Term Disability Benefits (both State and PERA), optional Long-Term Disability, and Americans with Disabilities Act.

Sick leave has evolved into an expectation of reward and an extension of annual leave. There are a wide range of behaviors on the use of leave throughout state government from those employees who use no sick leave to those who use all or keep minimum balances of sick leave. Personal Leave allows every employee to have access to all of their leave and more flexibility and control over how their leave is used. It is no longer prudent to have separate banks of leave that are limited to specific reasons, which continues to cause consternation between employees and management over how sick leave is used.

3. Why are changes being considered?

A study of the State's leave policies underscored that the current leave package is a piecemeal collection of separate and misaligned policies. Many of these current leave policies have been adopted without consideration of the leave package as a whole and have been in place for many years without any update or revision according to market trends.

Leave represents one of the most complex areas to manage and it is difficult for departments to implement leave consistently, let alone for employees to fully understand the nuances of each of the specific categories of leave and how they work with other benefits. The proposed policy is expected to streamline inefficient leave management and administration, free time for HR professionals and managers to concentrate their efforts on more productive tasks, boost employee morale by empowering them to manage their own leave, and place Colorado state government on the forefront of current leave trends so we are better positioned to recruit and retain into the future.

Personal Leave has the potential to save time spent by supervisors and HR professionals who must decide what type of leave applies to every absence, whether the leave runs concurrently with other types of leave, and resolve employee disputes. Also, it is simpler to understand and easier to calculate leave that is in one bank. Many state departments still have to track leave manually and even those that use computerized systems often need to perform manual calculations, making leave tracking a highly inefficient use of time.

4. What are the advantages of a Personal Leave policy for employees?

Employees will have full access to all of the leave they have accrued and the time can be used for any purpose. It will no longer be necessary for employees to fit their time off with the type of leave they have available. With a single type of leave, labeled as “personal leave”, there is no longer an issue over where the leave is drawn. For example, an employee who is taking leave to care for a close family friend or adult child who is not a legal dependent would not qualify for anything but annual leave under the current policy. However, with Personal Leave, the employee would be able to access all leave available to them, regardless of the reason.

5. As an employee, what am I gaining?

Having one type of personal paid leave provides flexibility to fit many different needs of a diverse workforce. There is no predetermined requirement that part of your earned leave is limited to specific reasons. If an employee is rarely sick, then he or she will have more leave available for vacation or other personal needs. If an employee leaves the system, he or she will get 100% payout of all Personal Leave at termination, subject to maximum accruals like today, regardless of their eligibility to retire. If retiring, Personal Leave is also PERA includable unlike current sick leave. In addition, employees gain an additional half-day of leave per year over what they earn today and greater flexibility to use that leave for any reason.

For those employees with Sick Leave Transition Reserves (Reserves), they can be used for any health or FMLA-qualifying reason, even if the employee is not yet eligible for FMLA. This includes adoption, foster care placement, or bonding. It is the employee’s choice to use the Reserve or Personal Leave for a health or FMLA absence, except for when an employee has applied for Short-Term Disability benefits or has a worker’s compensation claim.

6. What are the advantages of a Personal Leave policy for the employer?

Personal Leave makes leave tracking, management, and reporting less time consuming, more efficient and less costly to administer. Having a single type of leave eliminates issues over the type of leave that is appropriate for each absence. In other industries that have embraced personal leave models, research shows that Personal Leave banks also reduce unplanned absences, since there is no longer a need for an employee to call in sick in order to access accrued sick leave when annual leave has been exhausted. Although higher Personal Leave earning increases the State’s costs, those costs will be managed within existing budgets like today and, over time, the State will not carry unfunded liability of sick leave banks.

7. Does this mean that employees have complete control over their leave?

Employees have complete control over how they *choose* to use their accrued leave, however, as with current leave policies, Personal Leave still requires employees to request and have leave approved in advance when foreseeable. Leave must still be approved and supervisors or managers may still designate periods when leave cannot be taken except for unforeseen circumstances.

8. How will the Personal Leave policy affect a department's leave policies?

The impact is minimal. Appointing authorities will continue to have the authority to set requirements regarding leave scheduling and approval, processes for requesting leave and how much advance notice is required, coverage for shifts and vacations, and established periods when leave is not allowed or must be taken. Time keeping systems will need to be adjusted. What is key in making Personal Leave a successful time/resource management tool is an open dialogue between employees, supervisors, and managers when planning leave. Personal Leave by itself will not make scheduling easier. However, it does require employees and managers to do more vigilant planning of leave. Managers and employees will need to get into the practice of looking at leave requirements in advance rather than waiting until the last minute.

9. How will Personal Leave work with FMLA?

Personal Leave will not change the State's or employee's obligations under FMLA. Employees will still be required to provide enough information for the supervisor to make a designation for the absence. The State is still required to notify eligible employees of their rights and assure their job protection for up to 520 hours (13 weeks) when qualifying conditions are involved. The requirement to provide a medical certificate when out sick more than 3 consecutive days is still required. However, employees will gain access to accrued leave for situations like child adoption/bonding.

10. What will the Personal Leave policy look like?

Employees will not lose any accrued leave if the proposed policy is implemented. Employees will begin earning a single monthly accrual rate, depending on years of service, that will include current sick and annual leave accrual rates that are earned separately now. Any sick leave balance, following current rules on conversion and forfeiture, will be placed in a Reserve that the employee can access for any health or FMLA-related reason. The time in the Reserve will not replenish once it is used. The maximum accrual for Personal Leave is the current annual leave maximum plus 56 hours (equivalent of average sick leave usage). There will no longer be separate banks of sick and annual leave for employees to carry forward from year to year, unless they have a Reserve. In return, employees gain greater flexibility in using their personal leave to meet their individual needs.

11. What happens to current leave balances?

Employees will keep any earned leave balances in tact at the point of conversion. Current rules regarding conversion and forfeiture of over accrued leave will be applied first, just as in the past. Then employees' annual leave balances will transition to one single bank. Any sick leave will be placed into the Reserve hour for hour.

For example, an employee has 340 hours (336 maximum) of annual and 438 hours (360 maximum) of sick leave on June 30, 2008. On July 1, 2008, current rules will be applied first so sick leave will be reduced to the 360 maximum, with 16 hours converting to annual leave and the remainder forfeited. Annual leave will be reduced to 336 and the 16 hours of converted sick leave added for a new balance of 352 hours. Thus, the Personal Leave balance will be 352 and the Reserve will be 360 hours. The new higher earning and maximum accrual rates for personal leave will apply.

12. What happens to accrued time if an employee leaves state employment after the transition to the Personal Leave policy?

Employees would be paid out 100% for the total number of accrued Personal Leave hours, up to the maximum. If an employee is eligible to retire at the time of separation and has a Reserve, any sick leave hours in the Reserve will be paid out at .25, just like today.

13. If I leave state employment and I am not eligible to retire, will my Reserve time be restored if I return to state government?

No. As part of a continuing need to reduce the State's unfunded liabilities, Reserve balances will not be restored or replenished once they are used or forfeited.

14. Is this Personal Leave model considered final?

It is final as far as being proposed. However, comments are being considered before implementation. Formal rulemaking will also be required before the Personal Leave policy is enacted. Due to the lead time required by law, the notice of the rulemaking hearing will be filed soon in order to start the process. However, this does not mean the proposal is final. DPA will continue to consider any input all the way through the process and may modify the policy. The decision on whether to adopt rules and what the final policy will look like rests with the State Personnel Director.

15. Does this new policy apply to all government employees regardless of the employment system?

Personal Leave only applies to employees in the state personnel system (classified). This does not apply to any employee outside of the state personnel system.

16. Are there other public employers that have Personal Leave programs?

Yes. The Colorado State Judicial Department has a similar Paid Time Off (PTO) program in place, as does the City and County of Denver, and the State of Alaska. Pinnacle Assurance implemented PTO when it was still a state entity known as the Colorado Compensation Insurance Authority.

17. Are Personal Leave models becoming more popular?

PTO banks are growing in popularity among employers.

- The 2006 CCH *Unscheduled Absence Survey* reported 70 percent of respondents use PTO plans, up from 16 percent in 1991.
- In 2005 the U.S. Chamber of Commerce reported that 28 percent of respondents use PTO plans, up from 20 percent in 1991.
- A 2004 Mercer survey reported 42 percent of respondents use a PTO program, up from 30 percent in 2000.
- In a 2006 *WorldatWork Hot Topic Survey*, 33 percent of respondents reported having PTO banks. Among the companies without PTO banks, another 31 percent are considering implementing PTO.
- Mountain States Employers Council (MSEC) 2006 *Paid Time Off Policies, Colorado Wyoming* reported 31 percent of respondents (32 percent with 2000 or more employees) have a Paid Time Off/Consolidated leave plan, up from 26 percent in 2004.

18. With STD leave being eliminated, what type of job protection do employees have?

FMLA will still provide protection as it does today. Currently, unpaid STD leave and FMLA have the same eligibility requirements and run concurrently. The length of job protection will be 520 hours (13 weeks) of FMLA and any personal leave balance. Employees cannot be terminated for exhaustion of leave if there is a leave balance and if ADA applies.

19. Will I have to exhaust my Reserve before receiving STD benefits?

Yes. As is true today with sick leave, a Reserve must be exhausted prior to receiving the salary replacement benefits.

20. What if I don't have a Reserve, will I have to exhaust all of my Personal leave before receiving Short-term Disability benefits?

Employees will use Personal Leave to cover the 30 calendar day waiting period only, just as they would use annual leave today if they did not have any or enough sick leave available. Employees cannot be required to use their Personal Leave beyond the 30 calendar day waiting period as this could affect the STD benefit. An employee may also be eligible for donated leave under a leave sharing program to help cover the waiting period if all leave is exhausted.

21. Can I be terminated during the STD waiting period if leave has been exhausted?

Whether an employee can be separated is no different from today for those eligible for STD leave because eligibility is the same as FMLA and the protection of FMLA still applies. Also, ADA may impact protection as well. Remember, the STD benefit is not impacted.

22. Why is STD Leave being eliminated?

STD leave was originally designed to be unpaid leave and job protection like FMLA. Now that FMLA is in place, there is no longer a need to have two types of job protection leave that run concurrently. Therefore, the STD leave will be eliminated but the 60% salary replacement STD benefit will not change.

23. How will Bereavement Leave, Jury Leave and Holidays, etc., be impacted by this?

With the exception of STD, all other forms of leave offered by the State are not changing.

24. What happens to leave sharing programs under the new policy?

Employees will still be able to donate Personal Leave.

25. Is comp time impacted?

Compensatory time for non-exempt employees is not impact.

26. The maximum leave accruals are lower, isn't this just another attempt to take away benefits from state employees?

Personal Leave is a different way of earning and managing leave – not simply a combination of all aspects of current sick and annual leave policies. To gain access and flexibility to all earned leave, there must be give and take. The State is assuming higher cost for the increase in 100 % payouts for Personal Leave, plus the continued payout of Reserves for current employees. Employees are giving up the ability to build large balances of unfunded sick leave. For example, state employees cannot/should not use sick leave unless they are sick. The State is trying to level the playing field by allowing all employees to gain access to all of their leave for any reason. Yes, the caps on the maximum accrual that can be carried forward are not the total combined sick and annual leave that you could earn today. That would be a payout that the State cannot afford. But the flexibility to use leave for individual needs and the amount an employee can accrue to have available during the year balances the potential to build up one type of leave for “just in case”. That’s 10.5 days more that is 100% payable and PERA includable salary.

27. Why not combine the current caps on sick and annual leave, after all I own sick leave?

The State has a responsibility to be prudent, so more Personal Leave must be balanced with the costs to payout at 100%. Current annual leave carries the expectation that it will be used or paid. It is equivalent to wages or fully funded in the sense that we are paid for it as part of hours worked or paid at 100% when we leave state employment for any reason. Current sick leave is different in that the employer provides it as insurance for employees to use under defined circumstances. It is not fully funded in the sense that there is no expectation that it will be used in its entirety or for purposes like annual leave. It is not paid out except in the case of the 25% payout upon retirement. Basically, sick leave was the first form of short-term disability insurance and represents an unfunded liability. Thus, employees “own” annual leave but not sick leave.

28. Isn't the proposed policy going to hurt new state employees?

Currently, new employees earn 8 hours of annual leave and 6.66 hours of sick leave per month. It takes 2 years to earn the maximum annual leave accrual and 4.5 years to earn the maximum for sick leave, assuming no leave is taken during that time. Under the proposed policy, a new employee can earn 22.5 days in 1 year. If a new employee has a vacation planned when they accept employment with the State only annual leave can be used and they may be forced into unpaid leave because they do not have the “right leave” accrued. Under the proposed policy, they have access to all leave for any reason. More and more new employees are coming from employers who have Personal Leave policies, so they are accustomed to this type of policy and are requesting similar flexibility.

29. What about the first 3 days of worker's compensation where I use sick leave today?

The employee will use the Reserve to cover this absence. If the employee does not have a Reserve, it will be Personal Leave.

30. How will departments track and report balances in the Reserves?

It should be the same process departments use today to track and report sick leave balances.

31. How will the transition actually occur?

The annual leave balance will be placed in Personal Leave and the new higher earning rate will take effect. The sick leave balance will become the Reserve.

32. What is the quick summarized version of the changes?

Your sick leave balance will remain unchanged with no new accruals added and will be referred to as your Sick Leave Transition Reserve (Reserve). You will be able to use it for health or FMLA reasons. You are not required to use any leave from the Reserve unless you apply for Short-Term Disability benefits at which time you would have to use all of it before you would be eligible to receive Short-Term Disability benefits. Employees must also use the Reserve if a workers compensation claim is involved. Once the Reserve is depleted, it can never be replenished. Upon retirement, you will be paid 25% if there is a balance in this Reserve, which is the same as the current rules.

Your annual leave balance will become your Personal Leave balance and you will begin to earn at the new accrual rate based on the number of years you have been in state service. The maximum accrual rate increases accordingly as well. You can use this leave balance for anything you deem appropriate. At retirement or upon leaving state service, you will be paid 100% of this balance up to the maximum accrual limit (same as the current rules).

You cannot carry more than the maximum accrual limit of personal leave into any new fiscal year (same as the current rules).

33. Governor Ritter signed new legislation that allows employee unions to participate in the planning process for certain state employee benefits. It appears that personal leave will be one of these policies. What steps has HR (and DPA) taken to meet the requirements of Governor Ritter's new legislation?

DPA's executive director meets monthly with employee associations on a wide range of topics so we anticipate a continuing dialogue on the personal leave proposal. In addition to employee associations, we convened employee and manager focus groups, as well as meeting with the Total Compensation Advisory Council, HR directors, leave coordinators, and chief information officers. The insights from all of these groups has shaped the current proposal and provided considerations for planning implementation should the proposal be adopted during rulemaking.

That said, we would like to offer some clarification. Governor Ritter issued an executive order as opposed to signing legislation, which must be passed by the General Assembly. At this time, there are no certified employee organizations as a result of any election or negotiated participation agreements because the Director of the Division of Labor must first develop the processes and guidance to implement the executive order. In the meantime, our work on the total compensation package must proceed. However, we will continue to meet with employees and hear concerns just as we have up to this point.

34. When will the hearing for the personal leave proposal be scheduled?

DPA continues to meet with employees around the State on the proposed policy and gather impact information from departments. As soon as a hearing date is scheduled, the Notice of Rulemaking will be sent to all HR offices and it will be announced and posted on DHR's Web site. In addition, if a decision is made to proceed with implementing Personal Leave departments will be notified in plenty of time.