

TECHNICAL ASSISTANCE - TIME OFF

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised March 3, 2009.

GENERAL

- Employees are expected to request time off as far in advance as possible including a sufficient explanation and reason for the leave.
- Appointing authorities are responsible for approval of leave including determining the type of leave and proper designation for FMLA purposes, subject to rule and law. Appointing authorities may delegate this responsibility to supervisors or other responsible parties but are still accountable for proper leave management. Individuals approving leave requests are expected to exercise sound judgment and to consider the business needs of the state, as well as the needs of the employee, in determining whether a request will be approved.
- Time off should be requested on the *State of Colorado Leave/Absence Request Authorization* form (or equivalent form, including electronic leave systems). This form is also available from supervisors, appointing authorities, and department or higher education institution (department) human resources offices. It is designed to meet the state's needs while also complying with the requirements under the Family and Medical Leave Act of 1993 (FMLA). Health-related information is confidential and the forms containing such information are to be kept in separate secure files with limited access.
- Permanent employees begin earning annual and sick leave from the first day of employment. Part-time employees and full-time employees who work or are on paid leave less than a full month earn pro-rated amounts of leave.
- Although part-time employees earn leave on a pro-rated basis, maximum accruals are not pro-rated for part-time.
- Temporary employees do not earn leave unless mandated by law, i.e., jury and possibly family/medical leave.
- Paid leave is to be used before unpaid leave; however, the type and amount of leave depends on the specific circumstances and applicable leave policies.
- The annualized hourly base salary rate is used in calculating the lump sum payments of unused accrued leave upon separation. The number of work hours in the final month is not part of the calculation of leave payouts so the value of leave does not vary from month to month. The annualized hourly rate is calculated by multiplying the monthly base salary rate times 12 and then dividing by 2080; this value is then multiplied by the number of accrued leave hours.
- Annual and sick leave for employees working flexible schedules is charged based on the

employee's normal working day. For example, an employee who works four 10-hour days is charged 10 hours of sick leave if the employee is ill one of the scheduled workdays.

- An employee may not be required to forfeit sick or annual leave as a disciplinary action.
- Employees who are notified of layoff cannot be required to use annual leave during the notice period.
- Leave is available for use at the beginning of the next month after it was earned, including leave earned while an employee is on paid leave. Separating employees are compensated for leave earned during their last month of employment if they work or are on **paid** leave through the date of separation.
- An employee who is on paid leave may be transferred to a different position. Like other employees who are affected by transfer, the employee is entitled to a position in the same class but does not have rights to the same position. The only exception is an employee who is on family/medical leave (FML) typically may not be transferred to a different position unless it is virtually identical because the employee has restoration rights to the same or equivalent position upon return.
- An employee may not "borrow" against future leave or "buy back" leave that has already been used. For example, an employee who is involved in an automobile accident and subsequently reimbursed by an insurance company may not have sick leave restored by reimbursing the department for the value of the leave that was previously used.

Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted. Unless leave abuse is an issue, employees cannot be subject to disciplinary or corrective action if an employee fails to maintain a certain leave balance.

ANNUAL LEAVE

Purpose: Paid leave used for personal needs including vacation.

Eligibility: Permanent employees.

Approval: Advance approval by the supervisor or appointing authority is required. However, an appointing authority has discretion to allow employees to use annual leave that was not approved in advance or to charge unpaid leave.

Based on business necessity, an appointing authority has discretion to determine periods when annual leave will not be granted or when it must be taken. Such policies must be communicated to all affected employees and exceptions must be granted if denial of annual leave will not allow an employee a reasonable opportunity to use leave before it is subject to forfeiture at the end of a fiscal year.

In some situations involving other types of leave, an employee may be required to use annual leave in accordance with rule. A common cause is when sick leave has been exhausted and the employee is completing the 30-day waiting period for short-term disability benefits. An employee is also required to use all accrued leave before being placed on unpaid leave when family/medical leave is involved. For example, an employee who is adopting a child will be required to exhaust all annual leave before being placed on unpaid leave.

Leave Earning Rates

Years (Months) of Service	Hours/Month (for full-time employees)	Maximum Accrual That May Be Compensated Upon Separation or Carried Into New Fiscal Year
1st through 5 (60 th month)	8 hours (1 day)	192 hours (24 days)
6 th (61 st month) through 10 th (120 th month)	10 hours (1¼ days)	240 hours (30 days)
11 th (121 st month) through 15 th (180 th month)	12 hours (1½ days)	288 hours (36 days)
16 th (181 st month) on	14 hours (1¾ days)	336 hours (42 days)

Note: Part-time employees who work regular, non-fluctuating schedules earn a pro-rated amount of leave based on their regular work schedules. Leave for part-time employees working irregular, fluctuating schedules and full-time employee who work or are on paid leave less than a full month is calculated as follows:

$$(\# \text{ of hours worked} \div \text{total work hours available}) \times \text{employee's earning rate} = \text{amount of leave earned.}$$

Any accrued annual leave over the maximum accrual rate at the end of a fiscal year is forfeited on July 1. Upon separation, unused accrued annual leave is paid out, subject to the maximum accrual rate. An employee may not be paid for accrued unused annual leave except in separation situations. Leave must be transferred to the new department if an employee promotes, transfers, or demotes.

An employee's annual leave earning rate is based on the total number of months of state government service, excluding temporary assignments.

If a retiree accepts a temporary position, leave is not earned and previous leave earning rates do not apply. If a retiree returns to a permanent part-time position, the annual leave earning rate is restored and leave is earned on a pro-rated basis.

Part-time employees advance to the next higher annual leave earning rate based strictly on months of service. For example, an employee who works 40% will earn 40% of 10 hours (4 hours) of annual leave beginning with the 61st month (6th year) of service. Although leave earnings are pro-rated for part-time, leave maximum accruals are not pro-rated for part-time.

For information on leave earnings for employees with state service outside of the state personnel system, refer to technical assistance on *Bringing Employees or Positions into the State Personnel* on the DHR website.

Leave is available for use at the beginning of the next month after it was earned. Separating employees are compensated for leave earned through their last date of employment. Employees who

work or are on paid leave an entire month earn the full amount of annual leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on unpaid leave for part of the month. With the exception of voluntary furlough, annual leave is not earned while an employee is on unpaid leave.

SICK LEAVE

Purpose: Paid leave used for health needs including diagnostic and preventative examinations, treatment, and recovery, e.g., illness, injury, dental, optical, auditory, mental, substance abuse treatment. The temporary physical disability caused by pregnancy and childbirth is also covered by sick leave (excludes bonding).

Eligibility: Permanent employees. Sick leave can also be used for the health needs of immediate family members. A family member is a parent (biological or *in loco parentis*), child under 18 years, adult child incapable of self-care, spouse, legal dependent, or person in the household for whom the employee is the primary caregiver. *In loco parentis* is defined as an individual who filled the role of a parent, including ongoing daily care and financial support. An employee may be required to provide documentation of the familial relationship. In the case of military caregiver leave under FMLA, a child is one who is eligible for service.

Approval: Approval of the supervisor or appointing authority is required. Advance approval should be obtained to the extent possible.

The *State of Colorado Medical Certification Form Employee's Health Condition* or the *State of Colorado Medical Certification Form Family Member's Health Condition*, completed by a health care provider, is required when the absence is more than three consecutive full working days or the use of sick leave **shall** be denied in accordance with statute. The form may be required for absences less than three days.

The *State of Colorado Fitness to Return* form, completed by a health care provider, is required for absences over 30 calendar days due to an **employee's** health condition. It may be required for absences of 30 days or fewer based on the nature of the condition in relation to the job. This form cannot be required when leave is taken for a family member's condition.

Amount: Full-time employees earn 6.66 hours per month. Part-time employees who work regular, non-fluctuating schedules earn a pro-rated amount of leave based on their regular work schedules. Leave for part-time employees working irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated as follows:

$(\# \text{ of hours worked} \div \text{total available work hours in the month}) \times \text{employee's earning rate} = \text{amount of leave earned.}$

C.R.S. 24-50-104 provides that employees shall be credited with **no more** than 80 hours sick leave per fiscal year. The 6.66 hours sick leave that a full-time employee earns each month equates to

79.92 hours in a fiscal year. There is no provision that allows crediting an additional .08 hours to employees' sick leave balances at the end of each fiscal year to equal 80 hours.

Although leave earnings are pro-rated for part-time, leave maximum accruals are not pro-rated for part-time.

Employees hired before July 1, 1988, have individual maximum accrual rates equal to the state personnel system sick leave balance on July 1, 1988, plus 360 hours (45 days). Employees entering or being brought into the state personnel system on or after July 1, 1988, have a maximum accrual rate of 360 hours (45 days).

Any accrued sick leave over the maximum accrual rate at the end of a fiscal year is converted to annual leave. The conversion rate is one hour of annual leave for every five hours of over-accrued sick leave, up to 16 hours of annual leave. The following sequence of events is used in converting sick leave to annual leave:

6/30 Sick leave above an employee's maximum accrual rate is converted to annual leave.

7/1 1st - All non-converted annual leave above an employee's maximum annual leave carryover rate is forfeited.

2nd - Converted sick leave hours are credited to the employee's annual leave balance and any remaining sick leave (non-converted) over the employee's maximum accrual rate is forfeited.

All unused sick leave is forfeited upon separation from the personnel system unless the employee is *eligible* for an immediate full or reduced retirement. Immediate eligibility means having met the retirement plan's requirements as of the separation date (last day employed or on the payroll). If an employee is eligible for immediate retirement at separation, such employee is paid one-quarter of unused accrued sick leave, subject to the maximum accrual rate. The retirement plan is responsible for determining eligibility for retirement, so questions about eligibility should be directed to the plan. For example, a 49-year-old employee with a March 15 birth date separates on February 28 with 30 years of service in PERA's defined benefit plan. Because the employee has not met PERA's defined benefit requirements to be eligible for immediate retirement on February 28, the employee is ineligible for the one-quarter sick leave payout. In another example, if an employee separates on March 1 and meets PERA's defined benefit plan requirements for retirement, the employee is eligible for the one-quarter sick leave payout regardless of whether or not the employee applies for retirement benefits. The employee must be separating to be eligible for the one-quarter payout. Employees are only eligible for this payout one time, at the initial retirement.

If an employee exhausts sick leave and is unable to return to work, annual leave is used. If the employee is still unable to return after exhausting annual leave and no other leave or benefit is applicable (e.g., FMLA, short-term disability leave, ADA), the employee may be discharged, following a pre-termination exchange of information as provided in Rule 7-1B. The appointing authority also has discretion to grant unpaid leave.

A returning employee's sick leave balance is restored if the employee is *eligible* for reemployment or reinstatement, including certified employees who were discharged for exhaustion of paid leave.

A retiree, who accepts a temporary position, does not earn sick leave. A retiree who returns to a permanent part-time position is treated like any other part-time employee new to the state personnel system and has a maximum accrual rate of 360 hours but is not eligible for any sick leave payout when separating again.

An employee whose individual sick leave balance is above 360 hours is permitted to accrue sick leave up to this individual balance again if the use of sick leave results in the employee falling below the maximum sick leave balance. For example, an employee with an individual sick leave balance of 900 hours is permitted to again accrue up to 900 hours if the employee suffers an illness or injury that results in the use of 800 hours sick leave. Any employee, who leaves the state personnel system and later returns, forfeits any sick leave maximum over 360 hours. For example, an employee with a 500-hour sick leave maximum resigns for a private sector position and later returns is subject to the 360 hour maximum. Any previously accrued sick leave is restored up to 360 hours as long as the employee is eligible for reinstatement or reemployment and there was no payout. The only exception is that employees with individual sick leave maximums who move from the state personnel system to another state government system and back do not forfeit the higher maximum as long as the employee is continuously employed by the state.

Sick leave that an employee earned as a state employee in another system is transferred to the personnel system as long as there was no payout from the other system. Accrued sick leave that is in excess of the personnel system maximum is forfeit on the following July 1. The maximum accrual rate is 360 hours (45 days). The only exception is if an employee was in the state personnel system on July 1, 1988, and was granted a grandfathered sick leave maximum above 360 hours before leaving the state personnel system. An employee who worked continuously in a non-classified position and enters the state personnel system after July 1, 1988, will have a 360-hour maximum.

An employee who becomes ill while on vacation may request that annual leave be changed to sick leave. An appointing authority has discretion to grant this request, subject to all applicable sick leave provisions. An appointing authority also has the discretion to require or grant a request to make up the time in the same workweek in lieu of charging sick leave.

Sick leave is only granted for those days that an employee is scheduled to work and is unable to do so. It is not granted for unscheduled work periods (e.g., summer months for 9-month employees who regularly work September through May).

Leave is not available for use until the beginning of the next month after it was earned. Employees who work or are on paid leave the entire month earn the full amount of sick leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on unpaid leave for part of the month. With the exception of voluntary furlough, sick leave is not earned while an employee is on unpaid leave.

An appointing authority has discretion to request a medical certificate for absences of less than three full consecutive working days if abuse or misuse of sick leave is suspected. While departments are cautioned against establishing blanket policies requiring medical certificates from all employees for one or two-day absences, it is appropriate to request a medical certificate when sick leave abuse or misuse is suspected or for a pattern of suspicious sick leave use (e.g., pattern of illness on Mondays or Fridays). In addition, excessive use of sick leave may be addressed through the corrective and disciplinary action process in certain situations. Because this is a complex area, specific questions concerning potential sick leave abuse should be directed to the Division of Human Resources of the Department of Personnel & Administration or to the department's legal counsel.

HOLIDAY LEAVE

Purpose: Paid leave used to observe legal holidays.

Eligibility: All permanent full-time employees receive holiday pay provided they are in paid status the full scheduled work day before or after the holiday. Holiday leave is prorated only when an employee is in part-time status or a full-time employee has unpaid leave in a month in which a holiday occurs. Full-time employees having unpaid leave in a month with a holiday must be in paid status the scheduled work day before or after the holiday in order to receive a prorated portion of the holiday. The holiday is prorated based on the percentage of time worked or in paid status for the month. This same calculation applies to employees working for departments that observe alternate holiday schedules.

Example: Full-time employee, standard work week
Calendar

S	M	T	W	T	F	S
					1	2
3	H	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

In this example, the employee worked 120 hours out of 160 scheduled hours, or 75%. The employee will earn 75% of the 8-hour holiday, for a total of 6 hours

Actual Work Hours

S	M	T	W	T	F	S
					8	
	H	8	8	8	8	
	8	8	8	8	8	
	8	8	8	8	8	
	0	0	0	0	0	

Example: Full-time employee, alternate holiday schedule
Calendar

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

In this example, the employee worked 88 hours out of 128 scheduled hours, or 69%. The employee will earn 69% of each 8-hour holiday, for a total of 27.6 hours

Actual Work Hours

S	M	T	W	T	F	S
					8	
	8	8	8	8	8	
	H	H	H	H	H	
	8	8	8	8	8	
	0	0	0	0	0	

Employees on voluntary furlough receive holiday leave as though no unpaid absence occurred.

For employees of departments observing alternate holiday schedules, these schedules are used in the application of all of the holiday leave provisions. For example, if Presidents' Day is observed in June under an alternate holiday schedule and an employee quits or transfers in April after having worked the statutory holiday but before the date that the holiday is observed by the employer, the employee is not paid holiday leave on separation or transfer for having worked the statutory date. However, an employee who begins work in April is paid for the alternate Presidents' Day holiday when it is observed in June.

An employee who is ill on an alternate holiday is granted holiday leave just as an employee who is ill on a statutory holiday (e.g., Christmas) is granted holiday leave for the holiday, not charged sick leave.

Employees on injury leave at the time the holiday occurs are granted the holiday and the day is not counted as an injury leave occurrence. As another option appointing authorities could grant an alternate holiday when the employee is released to return back to work. The alternate holiday must be observed prior to the end of a fiscal year.

Approval: Ten holidays are granted by statute. These days are Independence Day (July 4th), Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's Birthday, Washington/Lincoln (President's) Day, and Memorial Day. Many departments and institutions of higher education adopt alternative holiday schedules to better fit their operational needs. The Governor, the Colorado General Assembly, or the President of the United States may declare additional legal holidays or special days of observance. In addition, legislation was signed on March 27, 2001, allowing executive directors and presidents of higher education institutions to grant a state employee's request to substitute César Chávez Day on March 31 for one of the statutory holidays in the same fiscal year, subject to the provisions of the law. When granting such requests, the department must be open for business and minimally operational on both days and the employee must be able to perform work. For example, a receptionist requests approval to observe César Chávez Day in lieu of Veteran's Day. Because the work unit is not open for business on Veteran's Day, there will be no visitors to receive or calls to direct and the employee will be unable to perform work.

Amount: Up to eight hours per holiday. Employees working flex schedules of more than eight hours in a day need to request leave for the extra hours beyond eight or arrange to make up the time during the week of observance. If a holiday falls on a day a flextime or part-time employee is not scheduled to work, the employee is granted an alternate holiday at a time determined by the appointing authority or designee.

It is recommended that alternate holiday leave be taken in the same week as the holiday. For example, if a holiday falls on a Monday in a week that a half-time employee works a regular schedule of 10-hour days on Wednesday and Thursday, the employee is eligible for four hours of holiday leave at a time determined by the appointing authority or designee. The same is true if an

employee is scheduled or required to work a holiday. In both instances, the appointing authority or designee has the authority to schedule the four hours of holiday leave so that the part-time employee is not losing holiday leave but is not gaining an additional four hours of pay. This concept of paid time off as opposed to additional pay also applies to the partial accrual for new hires; thus, the time is treated like an alternate holiday.

A holiday that falls during a period of disciplinary suspension is counted as one of the days of suspension and the employee is not paid for the holiday.

An employee who wishes to be granted leave for a non-statutory holiday may request to work a different day. For an employee who works a statutory holiday or the department's alternate holiday, the appointing authority must approve leave in place of the holiday. The intent of the statute is to ensure that an employee who worked on a statutory holiday or a department's alternative holiday receives the full compliment of 10 holidays. All arrangements and approval are made in advance.

BEREAVEMENT LEAVE

Purpose: Paid leave to make arrangements for, travel to, and attend funeral services or to grieve the loss of family members or others. It does not cover settlement of an estate.

Eligibility: Permanent employees.

Approval: Employees may request, in writing, up to 40 hours of paid leave for the death of a family member or other person with whom the employee has a relationship. The definition of family member and other is purposely broad because today's families do not reflect the traditional family structure. In addition, there are other relationships that have a significant impact on an employee's life, e.g., family friend, neighbor, college roommate.

Bereavement leave goes beyond attendance at a traditional funeral. The leave is intended to be the expression of the employer's sympathy by providing time off to grieve a loss, which may include a service or gathering. However, bereavement leave is not intended to deal with business such as settling the estate.

Supervisors and employees have mutual responsibility to engage in a dialogue so that the employee's needs are clear. Employees are expected to request the amount of leave needed in writing and communicate their needs to the supervisor. This includes divulging the nature of the relationship and the employee's needs related to grieving and any service or gatherings.

For supervisors determining the amount of leave to approve, the employee's needs always have primary consideration over business necessity. Leave approval is always based on individual circumstances and will not be the same for all employees. This includes discussing the employee's relationship to the deceased, the distance and mode of transportation to attend any services, and any other needs. This does not mean that supervisors are expected to evaluate the worth of the relationship, but rather have an understanding of how the employee is impacted when granting the requested leave. If the employee is in need of grief counseling, supervisors can refer employees to CSEAP.

Suspicion of abuse shall be investigated. Any substantiated abuse of leave may be subject to corrective or disciplinary action including termination of employment.

Amount: Up to 40 hours per occurrence.

JURY LEAVE

Purpose: Paid leave used when called to jury duty.

Eligibility: Permanent and temporary employees, when required by state law.

Approval: The supervisor or appointing authority will approve the leave. Proof may be required.

Amount: Permanent employees are granted jury leave for the period they are required to serve. Temporary employees are granted up to three working days when jury duty occurs during days they are normally scheduled to work.

Employees are not required to turn jury pay, including mileage and parking allowance, over to the department in order to receive regular pay.

An employee who is on annual leave when called to jury duty must be granted jury leave for the period of jury service.

Employees working second and third shifts are eligible for jury leave. Statute prohibits an employer from making demands upon any employed juror that will substantially interfere with the effective performance of juror service. Accordingly, second and third shift employees should not be required to work their regular shift after a full day of jury service. The appointing authority determines the policy regarding return to work when early release or partial days of jury service occur.

ADMINISTRATIVE LEAVE

Purpose: Paid leave designed to relieve an employee of official state duties in order to participate in activities determined by the appointing authority to benefit the state. *It is not meant to be a substitute for tracking time away from the regular duty station for work activities, e.g., on-the-job training, off-site work meetings, work-related conferences and training.* It is also not intended to be a substitute when corrective or disciplinary action is appropriate or to be used in place of other benefits or types of leave (e.g., bereavement or sick leave). Prudent use of taxpayer and personal service dollars, as well as the business needs of a department, are factors that an appointing authority considers in determining whether administrative leave will be granted. Any administrative leave granted to a single employee that exceeds 20 consecutive working days must be reported to both the department director and the state personnel director.

It *may* be granted

- to participate in examinations and interviews upon referral for state positions,
- to participate in school or community volunteer activities,
- to attend classes at an educational institution that can be applied directly to the work but the course work is not a requirement of the job,
- as an incentive or supplement for extraordinary or exemplary performance,
- to participate in official activities as an elected officer of an employee organization,
- to make whole for active military service (see technical assistance on Veterans and Active Military),
- to certified disaster service volunteers of the American Red Cross during local (up to 5 days per fiscal year) or national emergencies (up to 15 days per fiscal year),
- during a period of investigation into an employee's activities, or
- for any other reason deemed by the appointing authority to be in the best interests of the state. This includes EAP counseling sessions where the granting of such leave may be particularly appropriate when an employee is seeking help with a problem that affects job performance.

Administrative leave may also be granted to non-essential employees under the state's Inclement Weather Policy if a closure of state facilities occurs. Essential employees who are required to work during a closure of state facilities are paid at the regular rate and are not granted a future day of administrative leave. Employees who are already on approved annual, sick, or other type of leave when a closure occurs remain on leave and administrative leave is not substituted for the period of closure. Employees who arrive late to work because of weather conditions when a state facility has not been closed may be granted administrative leave (typically no more than 2 hours) at the discretion of the appointing authority. The Inclement Weather Policy is printed in the State Employee Handbook.

Administrative leave *must* be granted for the following.

- Two hours to participate in general elections (even numbered years) if an employee does not have three hours of unscheduled work time between the hours of 7:00 a.m. and 7:00 p.m.
- Up to two days in a fiscal year to donate an organ, tissue or bone marrow for transplants.
- To serve as an election judge unless it is determined by the supervisor that attendance on Election Day is essential. Employees may not accept both election judge pay and administrative leave. If an employee accepts election judge pay then administrative leave shall not be granted.
- Up to 15 days in a calendar year for a qualified volunteer of a qualified volunteer organization as listed by the Department of Local Affairs (DOLA) when directed to serve during an emergency within the state, or a member of the civil air patrol called to duty for a rescue mission. Employees are to be restored to the same position and class as if they had not taken the leave. If the certified disaster volunteers in the American Red Cross also qualify for this volunteer leave, the two leaves run concurrently. Note that the American Red Cross volunteer leave runs on a fiscal year not a calendar year.

Time taken for official, work related, court matters is work time, not administrative leave. Also, administrative leave is not granted for general subpoenas not specifically related to work (e.g., civil

cases, non-work-related witness testimony). Administrative leave is not granted merely because the state judicial system has issued a subpoena to an employee.

Eligibility: Permanent employees.

Approval: The appointing authority grants administrative leave.

Amount: At the discretion of the appointing authority unless specified above.

FAMILY/MEDICAL LEAVE

Purpose: Unpaid leave used to provide a guaranteed amount of time, job protection, and continued benefits to eligible employees for the addition of a child or the serious health condition of a parent, child, spouse, or self. Child for health-related FMLA is defined the same as under sick leave (under 18 or over 18 if disabled). It also applies to active duty family leave and military caregiver leave. In the case of military caregiver leave, next of kin is also eligible. Next of kin means nearest blood relative other than the covered servicemember's spouse, parent, or child in the following priority order: relatives granted legal ward or custody through court order, siblings, grandparents, aunts and uncles, and first cousins. If the servicemember has declared a next of kin, only that individual is considered next of kin. If the servicemember has not declared a next of kin, all those in a category mentioned above are considered next of kin and eligible for the leave, e.g., all siblings, all grandparents if no siblings, and so on.

Eligibility: Permanent employees with one year of state service, including all paid and unpaid leave. Temporary employees with one year of state service and who have worked 1250 hours in the 12 months prior to the beginning of the leave. Employees in the Reserves or National Guard are entitled to count active military duty absences as time worked to establish eligibility (just as other employees on the payroll, even if on unpaid leave).

Approval: The supervisor, appointing authority or other responsible delegated party must determine employee eligibility and whether each absence is qualified at the time any leave is requested. The employee does not have to specifically apply for or mention family/medical leave. However, employees do have to explain their reasons for the leave in sufficient detail to support the need for leave. The employee cannot waive family/medical leave rights.

Amount: Full-time employees are eligible for up to 520 hours per fiscal year, including active duty family leave. Military caregiver leave is a one-time period of up to 1040 hours in a single 12-month block, counted from the date this leave begins. Part-time employees are eligible for a pro-rated amount. Whether family/medical leave is paid or unpaid depends on the individual circumstances; however, exhaustion of all applicable annual leave, sick leave, and compensatory time is required before being placed on unpaid leave, subject to the provisions of the specific leave. In cases where FML and short-term disability apply concurrently, use of annual leave beyond the 30-day waiting period is not required. Family/medical leave runs concurrently with all other types of leave except when the employee is using sick or annual leave to be "made whole" while receiving temporary disability payments under workers' compensation for a work-related illness or injury.

Director's Rule is very specific that sick leave is only for the health-related reasons of the employee, spouse, parent, or child. Health reasons include diagnostic and preventative exams, treatment, and recovery. Under federal law and state rule, the temporary physical incapacity due to pregnancy, childbirth, and recovery from childbirth is considered a serious health condition and eligible for sick leave. The key issue here is the recovery period after childbirth, which can go beyond the mother's hospital stay. All conditions that are covered under the Family and Medical Leave Act (FMLA) need to be examined carefully to ensure that the appropriate leave is designated. The duration and type of leave is always specific to the individual circumstances and driven by the medical certificate completed by a health care provider.

For employees needing to take leave for the temporary physical incapacity due to pregnancy and childbirth for themselves or their spouses, the duration of recovery certified by a health care provider will be covered under the sick leave policy to the extent the employee has sick leave available. For example, a male employee requests leave to care for his spouse and provides a valid medical certificate stating the spouse requires four weeks for recovery from childbirth shall be granted four weeks of sick leave to the extent he has the leave available. Once the health care provider certifies that the mother is recovered, sick leave stops and the remainder of the leave is for care and bonding with the child, which is annual leave to the extent available followed by unpaid leave. Care and bonding with a child is not considered a physical or mental incapacity so sick leave is no longer appropriate. Departments must carefully review certification forms related to pregnancy and the corresponding leaves granted and make any necessary adjustments to leave accruals for employees with a qualifying condition as of July 1, 2007.

Active duty family leave means a child, parent, or spouse experiences a qualifying exigency directly related to being called to or on active duty for a contingency operation during a declared war. Examples of qualifying exigency include short-notice deployment, military events and related activities, short-term childcare and school activities due to the exigency, financial and legal arrangements due to the exigency, non-medical counseling, post-deployment activities, and additional activities mutually agreed upon by the employee and appointing authority. The *State of Colorado Certification of Qualifying Exigency for Military Family Leave* must be completed.

For purposes of military caregiver leave, the parent, child (one eligible to serve), spouse, or next of kin has suffered a serious injury or illness in the line of duty while on active duty that renders the service member medically unfit to perform his or her military duties. The leave covers medical treatment, recuperation, or therapy; outpatient status in a military facility or unit; or placement on the temporary disability retirement list. For certification purposes, *State of Colorado Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave* needs to be completed.

Departments shall not use conditional designations but wait until a sufficient certification(s) has been received in order to make the designation. A certification is considered to be incomplete if one or more of the applicable entries have not been completed, or all entries are complete but the responses are vague, ambiguous, or non-responsive. It is critical that departments review all certification forms to ensure that all sections have been completely filled out and that it does not contain inconsistencies

or ambiguities. If departments receive incomplete certifications, they must request that the employee obtain the missing information and clearly identify all of those deficiencies in the *State of Colorado Designation Notice*. It is the employee's responsibility to comply. Employees must be afforded a reasonable opportunity to cure the deficiency (seven calendar days). On the other hand, if the information on the form is complete and clear, departments may not seek additional information from the employee. If the employee fails to cure those deficiencies the leave may be denied.

Departments are to attach a copy of the employee's duty statements from the official job description with the medical certification form so that the health care practitioner gets an understanding of the employee's job duties. With specific information on the employee's job responsibilities, a health care provider can make a reasonable estimate of the duration of the condition, an estimation of time needed to care for a family member, the expected duration and scheduling of leave, and how to best accommodate the need for medical leave, e.g., intermittent or reduced leave schedule. Remember that health care providers are only required to provide an estimate of the need for leave, not exact dates.

Departments are not to develop blanket policies that require all individuals with a qualifying condition who are not currently on FML to automatically submit new certifications at the beginning of the new FML year simply because they *might* use it again in the new FML year (e.g., chronic condition). The certification must be triggered by an absence. However, departments may initiate the certification process when leave is requested in a new FML leave year. This can be done even if an employer requested recertification within the previous 12-month leave year. Reinitiating the certification process in the new FML leave year is a reassessment of the qualifying condition. Once it has been established that the condition continues to qualify, it carries through the entire 12-month FML period. In essence, obtaining a new certification in a new year is like obtaining the original certificate so designation and notice is required. If the employer has reason to doubt the validity of the new certification, a second or third opinion can be requested. In addition, individual leave request from employees must be designated as FML-qualified.

Departments must remember that STD leave and benefits may also apply and must ensure that adequate notice of the eligibility and application requirements for STD *leave* are provided in conjunction with FMLA rights and STD benefits.

The employee has the right to be restored to an identical position upon return from family/medical leave. This is different than other types of leave for which an employee is entitled to be restored to a position in the same class but not the identical position. If the employee is unable to return to work at the end of family/medical leave, restoration rights under the federal law no longer apply and regular leave rules are used. This is a unique right for family/medical leave only. In all other cases of leave, the employee only has a right to a position in the same class.

MILITARY LEAVE

Purpose: Leave used for the call-up, annual encampment, or equivalent reserve training for members of the National Guard, military reserves, or active military as required by state statute.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority will grant the leave upon presentation of proper military orders.

Amount: The first 15 working days (120 hours) per calendar year are paid; any additional military leave beyond 15 days is unpaid. The duration cannot exceed five years, subject to exceptions in federal law. If an employee is placed in line-of-duty status or similar military-related disability during this time, the employee is considered to be on military leave.

For detailed information, refer to technical assistance on Veterans and Active Military on the DHR website.

UNPAID LEAVE (LEAVE WITHOUT PAY)

Purpose: Generally used after other applicable paid leaves are exhausted.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority approves leave without pay.

Amount: At the discretion of the supervisor or appointing authority, subject to other leave and benefits policies.

The employee must pay both the state and employee portions of the premium to maintain insurance benefits (except when family/medical leave, short-term disability leave, or voluntary furlough leave are involved). Unpaid leave affects probationary and trial service periods. Service dates and years of service for leave earning purposes are adjusted one month forward for every 173 hours of unpaid leave (except when the employee is on voluntary furlough unpaid leave). This includes any period of unpaid leave following exhaustion of injury leave and make whole when the employee is receiving temporary disability payments from Workers' Compensation.

If a position is abolished while occupied by an employee on unpaid leave, the employee is processed under the layoff rules in same manner as if the employee had been at work.

SHORT-TERM DISABILITY LEAVE

Purpose: Unpaid leave used when an employee has applied for or is receiving short-term disability benefits from either the state's or PERA's short-term disability program.

Eligibility: Permanent employees with at least one year of state service who have applied for short-term disability benefits within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all sick leave. The employee must notify the department at the same time the application for benefits is made. A reinstated employee is eligible for short-term disability leave based on the employee's former state service.

Approval: The supervisor or appointing authority grants leave when the employee has applied for or is receiving short-term disability benefits.

Amount: Up to 180 days including the waiting period.

Note that there is a waiting period of a minimum of 30 days. An employee must exhaust all sick leave before that employee can receive salary replacement benefits. If the employee does not have sick leave to cover the waiting period, annual leave is charged. If annual leave is exhausted before the end of the waiting period, the employee is placed on unpaid leave. Employees, including those under FMLA, are not required to use annual leave beyond the waiting period because doing so will impact STD benefits.

An employee earns leave for periods of paid leave during the 30-day waiting period or when exhausting paid sick leave beyond the waiting period. Once these conditions are met, the employee no longer earns leave and service dates and seniority are adjusted in accordance with rules.

It is important that departments are timely in providing the application form for benefits and in notifying the employee of the deadline to file in order to be eligible for short-term disability leave. Employees who fail to apply for the short-term disability benefit within the prescribed time may be discharged when sick and annual leave is exhausted and no other leave or benefit is applicable, e.g., FMLA and ADA. However, the discharged employee may still receive short-term disability benefits.

An employee who is receiving workers' compensation benefits may also apply for short-term disability benefits. Although the short-term disability benefits will be offset by workers' compensation, the employee will be afforded the job protection of short-term disability leave.

MAKE WHOLE

Purpose: A policy used for employees who have a compensable on-the-job illness/injury under workers' compensation. The policy allows an employee to use accrued sick or annual leave, as appropriate under the rules, to make up the difference between the employee's gross base salary and temporary disability payments. The intent is to get as close as possible to the employee's gross base salary but not exceed it. Note: the make whole concept also applies to administrative leave and leave sharing for active military (see technical assistance on Veterans and Active Military).

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority approves. An employee may elect to use compensatory time before being placed on sick and then annual leave. In workers' compensation cases, employees do not have discretion to request that they not be made whole and may not turn over workers' compensation payments to the department.

Amount: The difference between temporary disability payments and gross base salary. Workers' compensation payments are based on an employee's weekly salary so the annualized weekly salary is

used. The following formula illustrates the method of calculating the amount of leave that should be charged:

Monthly salary x 12 divided by 52 = weekly salary

Monthly salary x 12 divided by 2080 = hourly salary

Weekly salary – workers' compensation pay = Difference divided by hourly rate = hours of leave that should be charged

When the condition of an eligible employee also qualifies under family/medical leave, the designation should be made but family/medical leave cannot actually run concurrently as long as the employee is being made whole. This is unlike any other form of leave that is counted concurrently with family/medical leave.

An employee who is being made whole for an entire month earns the full amount of sick and annual leave. Leave is pro-rated for an employee who is made whole for part of a month and is on unpaid leave for the remainder.

INJURY LEAVE

Purpose: To provide full pay through regular payroll for the first 90 days of an illness or injury that is compensable under workers' compensation.

Eligibility: A permanent employee (including probationary, but not provisional or temporary status) who suffers an injury or illness that is compensable under the Workers' Compensation Act and who assigns or endorses the temporary compensation payments to the employing department.

Approval: Human Resources Office

Amount: 90 occurrences (counted in whole day increments regardless of the actual hours absent during a scheduled work day). For example, an employee absent from work for two hours for a compensable workers' compensation injury is charged one day of injury leave. Also, if an employee is absent from work for two separate timeframes in the same day, the employee is charged one day of injury leave.

VOLUNTARY FURLOUGH LEAVE WITHOUT PAY

Purpose: To prevent the need for position reductions and/or abolishment when an executive director or president of a higher education institution officially declares a budget deficit in personal services.

Eligibility: Permanent employees.

Approval: The supervisor or appointing authority upon official declaration as described above.

The statutes also allow mandatory furlough to be declared by the Governor and Colorado General Assembly under certain conditions. If a mandatory furlough is ever declared, instructions and guidance will be issued.

Amount: Up to 72 working days in a fiscal year.

Employees earn sick leave, annual leave, and holidays while on voluntary furlough. The state continues to pay the employer's share of the health insurance premium and service dates are not adjusted. An employee who is on voluntary furlough unpaid leave and experiences a qualifying event under family/medical leave is removed from voluntary furlough and placed on sick and/or annual leave, as appropriate. The employee is removed from voluntary furlough leave because of the requirement that an employee on family/medical leave exhaust all paid leave before being placed on unpaid leave.

A target furlough savings should be identified before announcing the voluntary furlough and requesting volunteers. The declaration of a budget deficit and announcement of the furlough must identify the voluntary furlough time frame. It is also recommended that the furlough announcement states that the time frame may be extended or shortened based on employee response and meeting targeted savings.

In addition to the declaration, parameters should be defined for furlough approval. For example, a department may take applications on a "first come, first served" basis or require all interested employees to apply by a certain date and consider all applications at one time. The department should document and communicate the reasons for which applications will not be approved such as family/medical leave, essential employees, workload issues in a specific unit, etc. A written agreement, signed by the employee and the appointing authority, is required (a sample agreement is attached). Documentation, including written agreements and approved or rejected applications, is kept in the personnel file.

VICTIM PROTECTION LEAVE

Purpose: Unpaid leave for victims of stalking, sexual assault, or domestic abuse or violence to seek a restraining order, obtain medical care or counseling for the employee or the employee's children, secure or seek safe housing, or seek legal assistance and participate in legal proceedings.

- Leave to seek a restraining order still applies even if the order is not granted.
- Securing or seeking safe housing includes, but is not limited to, changing locks, installing alarm systems, moving into a safe house or other alternative housing.
- Seeking legal assistance includes obtaining legal counsel, filing legal documents, meetings with counsel, preparation for legal proceedings, etc.

Eligibility: Employees with one year of state service. Annual leave and any applicable sick leave must be exhausted. The one year of state service does not need to be consecutive service.

Approval: Approval of the supervisor or appointing authority is required. Documentation of the need for leave may be required.

The type of documentation depends on the reason for the leave. Documentation includes application or a restraining order or receipts for filing fees, police reports, *State of Colorado Medical Certificate* form from a health care provider, letter from a victims assistance organization or legal counsel, court documents, receipts for work done to secure the home, or completion of the *Victim Protection Affidavit* attesting to the reason for the leave.

All documentation in support of victim protection leave is confidential and is to be kept in separate, locked files with limited access. Because documentation may include medical information and the confidentiality standards are similar, storage with employee medical files may be appropriate.

Amount: up to three working days per fiscal year. The amount of leave is prorated for part-time. Appointing authorities have the authority to grant additional leave without pay.

Use of victim protection leave does not shield an employee from an employment action that would have otherwise occurred regardless of the use of the leave. Like other types of non-FMLA leave, restoration is to any position in the same class.

LEAVE SHARING PROGRAM

Purpose: To allow an employee to transfer annual leave to an eligible employee if that employee or an immediate family member is experiencing a catastrophic illness or injury that poses a direct threat to life, the employee is a 1st responder or the victim of a catastrophic event, or the employee is experiencing undue hardship due to military duty. First responders are trained emergency personnel officially dispatched to respond to catastrophic events (e.g., fire, medical, law enforcement personnel). Separate more detailed guidance is available for developing leave sharing programs on the DHR web site.

Eligibility: Permanent employees with at least one year of state service who have exhausted all applicable accrued leave. Leave sharing is intended to be a “court of last resort” and is not a substitute for short-term disability, long-term disability, or workers’ compensation benefits.

Approval: The executive director of a department or the president of a college or university. Approval of leave sharing may only be delegated below the executive director/president level with the approval of the state personnel director.

Leave sharing is voluntary and departments develop their own leave-sharing programs that may include provisions for individual leave donation or donation to a leave bank. Denial of a request for donated leave cannot be grieved or appealed.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* (rules), the Colorado State Employee's Handbook, or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

SAMPLE

(Date)

TO: Employees, Department of XYZ

FROM: Executive Director

SUBJECT: Budget Deficit in Personal Services

The Department of XXX is currently facing a budget deficit in personal services. Options are being explored to address the shortfall while at the same time avoiding the layoff of staff, if possible. In recognition of the budget deficit, all employees are being offered voluntary furlough during this fiscal year. The expected duration of the authorized voluntary furlough period will be XXX months, scheduled to begin XXXX with an end date of June 30, XXXX. Depending on employee response, the duration of the furlough period may be extended or shortened as budget savings are achieved.

Based on initial calculations, the target savings can be achieved if each employee were to take a furlough of XXX days between XXXX and XXXX. The furlough is entirely voluntary and should not be construed as a requirement. Employees are encouraged to consider their own financial circumstances when making the decision whether to apply for voluntary furlough.

Anyone interested in volunteering for furlough should contact the Human Resource Office at 000-123-4567 by XXX (date). Participants will be expected to sign a written agreement detailing their rights and responsibilities during the furlough. Job assignments along with work unit needs will be taken into consideration as furlough requests are approved by appointing authorities. Once the targeted budget savings are achieved, no future furloughs will be approved.

SAMPLE

VOLUNTARY FURLOUGH AGREEMENT

This Voluntary Furlough Agreement is being entered into this ____ day of ____, 20XX between _____ (the "State Agency" or "Institution") and (employee's name) "_____".

RECITALS

WHEREAS, the _____ is an agency of the State of Colorado and is facing a serious budget deficit, and

WHEREAS, _____ is an employee of the State Agency and in recognition of the budget deficit has requested a voluntary furlough,

Both parties agree to the following:

OBLIGATIONS OF THE EMPLOYEE

1. _____ agrees to take a total of _____ hours, not to exceed 72 days per fiscal year, under voluntary furlough.

2. The employee understands that the furlough hours will be scheduled based on a mutually agreed upon schedule. The agreed upon schedule is _____ (e.g., eight hours every other Monday, four hours every Friday), for _____ (weeks, months, etc.).

3. The furlough will begin the week of _____ and end the week of _____.

4. The employee understands that his/her monthly salary will be reduced by the amount of voluntary furlough leave taken and paid leave will not be charged.

5. The employee understands that there is a potential impact on future retirement benefits due to the salary reduction from voluntary leave without pay. It is the employee's responsibility to discuss potential retirement impact with the appropriate retirement plan.

OBLIGATIONS OF THE STATE AGENCY

6. The State Agency agrees to accept _____'s voluntary furlough.

7. The State Agency agrees that the approved voluntary furlough period will be effective _____ and will terminate no later than _____ and further agrees that the voluntary

furlough may be terminated earlier if budget savings are met.

8. The State Agency agrees that there will be no affect on the terms and conditions of the employee's duty assignment (shift, location, duties, assigned projects, schedules) as a result of requesting voluntary furlough. However, the appointing authority retains the right to change the duty assignment (shift, location, duties, assigned projects, schedules) based on business needs.

9. The State Agency understands that there will be no adverse impact on health, dental, life, and other insurance benefits.

10. The State Agency understands that the employee will continue to earn leave at the regular rate during the furlough as though no furlough was taken. Voluntary furlough will not impact the service date nor delay a change to an employee's leave accrual earning rate. Furlough hours taken the day before or the day after a scheduled holiday do not affect the holiday pay.

GENERAL PROVISIONS

11. The parties have discussed, understand, acknowledge, and agree that this Agreement reflects all terms and conditions of the voluntary furlough. Any changes to this agreement must be written, signed by both parties, and attached to this agreement or a new Voluntary Furlough Agreement developed.

12. Both parties have voluntarily entered into the agreement. Terms are determined in agreement by both parties.

13. Either party may terminate the agreement at any time. Termination of this agreement must be in writing. There will be no retaliation for withdrawing from the agreement.

14. Both parties understand that if a qualifying condition under the Family and Medical Leave Act occurs while a voluntary furlough agreement is in place, the agreement shall be terminated immediately.

SIGNATURES

Employee

Date

Appointing Authority

Date

Original filed in the official personnel file
Copies provided to the employee and supervisor

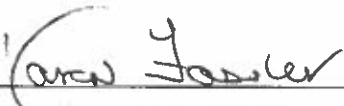
**TECHNICAL ASSISTANCE
DHR APPROVAL FOR PUBLICATION**

This signature page is required for new technical assistance or when major policy revisions are made resulting from changes in law, rule, directives, or official interpretation. As of March 1, 2009, new signatures are not required for non-substantive revisions resulting from correction of errors (e.g., typographical or grammatical), or updating factual information (e.g., minimum wage, statute or rule cites) or illustrative samples. Readers should always check the date on the first page to ensure they are using the most current version.

Technical Guide Topic: Time Off

Effective Date of Revisions: March 3, 2009

Date of Superseded Version: August 7, 2008

Section Manager:  Date: 2/26/09

Division Director:  Date: 3/2/09