



**Texas Behavioral Health Executive Council**  
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## **PERSONNEL MANUAL**

### **IMPORTANT NOTICE:**

The information contained in this manual does not constitute an expressed or implied employment contract, does not create property interests, and prohibits any employee the authority to enter into a contractual agreement regarding employment with any other employee. Employees are considered "at will." This means that employment may be terminated at any time by either the agency or the employee for any reason or no reason, with or without cause and without liability for failure to continue employment. At the discretion of the Executive Director, the policies and/or procedures set out in this manual may be altered, waived, or changed without prior notice.

This personnel manual supersedes any previous versions, as well as any unwritten policies and procedures.

Where possible, this personnel manual is to be construed in harmony with the *Texas Human Resources Management Statutes Inventory* and the *Leave Interpretation Letters* published by the Texas State Auditor's Office.

A current copy of this manual is available for download from the agency's website at [www.bhec.texas.gov](http://www.bhec.texas.gov).

### **GENERAL STANDARDS OF CONDUCT:**

The General Standards of Conduct for employees of the Texas Behavioral Health Executive Council (the "Council") establishes minimal requirements that are not to be considered all-inclusive. The absence of a specific rule, policy, or provision covering any act which would discredit an employee or the agency does not mean that the act is condoned, is permissible, or would not call for disciplinary action including, when considered necessary, termination of employment. Disciplinary action will be based on the assumption that the employee is familiar with the Standards of Conduct and is aware of his or her obligations.

Council employees should also familiarize themselves with the *Guide to Ethics Laws for State Officers and Employees* published by the Texas Ethics Commission. This document can be found

on the Texas Ethics Commission's website. Council employees are required to conduct themselves in accordance with the ethical laws governing state employees, and any disciplinary action arising out of a violation of these laws will be based upon the presumption that the employee was familiar with those laws.

Council employees may not have any interest in or engage in any business or professional activity or incur any obligation, which is in substantial conflict with the proper discharge of duties in the public interest.

Council employees are free to engage in outside employment or business activities provided that the activity (1) is not prohibited by any statute, regulation, order or directive, (2) does not deal with matters under this agency's jurisdiction, (3) would not use public or confidential information obtained from the Council and (4) will not impair the employee's ability, availability, capacity or efficiency in performing official duties in the agency.

Employees must conscientiously perform their duties for the agency and the public. They are required to respond readily to the direction of their supervisors, to cooperate fully with all properly constituted authorities, and do their work promptly and accurately. Differences or disagreements with fellow employees or supervisors should be handled properly through the chain of command.

All basic identifying information and all information contained in an employee's application for employment is public information under the Texas Public Information Act. Personnel information that may be released to the public is as follows: name; address; telephone number; sex; job title and classification; rate of pay; annual salary; ethnicity; linguistic and cultural background, dates of employment; educational background; date of birth; and prior employment. In accordance with §552.024, Subchapter B, Texas Government Code, employees may request the public not have access to their social security number, date of birth, home address, telephone number, emergency contact information or information indicating whether you have family members. Other personnel information available to the public is information about job performance, reasons for dismissal, demotion or promotion or resignation.

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## **I. SALARY ADMINISTRATION, BENEFITS, HIRING AND FIRING**

### **1. SALARY RATES FOR CLASSIFIED POSITIONS**

Salary rates for classified positions are in accordance with the current classified salary schedule. No salary adjustment may result in an employee receiving an annual salary rate in excess of the maximum rate of the salary group of the classified position.

### **2. MERIT SALARY INCREASE**

The Executive Director may grant merit salary increases to classified employees whose job performance and productivity is consistently above what is normally expected or required. Merit raises will be considered during the fiscal year for all classified employees. To be eligible for a merit salary increase, employees must meet the following criteria:

- A. The employee must be employed by the agency in a classified position for at least six (6) continuous months prior to the merit salary increase;
- B. At least six (6) months have elapsed since the employee's last promotion, demotion, or merit salary increase; and,
- C. The granting of a merit salary increase must include specific justification and documentation to substantiate its award.

### **3. SALARY EQUITY ADJUSTMENTS**

Equity adjustments are intended to maintain salary equality among similarly classified agency employees performing similar work or in comparison to employees in similar positions in relevant job markets.

The Executive Director may make an equity adjustment in the following situations:

- The employee's salary is lower than peers though the tasks performed are similar; or
- Actual or likely turnover in a position due to higher salaries offered by other employers for similar work.

When determining whether inequity exists in salary relationships, the Executive Director shall consider the education, skills, related work experience, length of service, and job performance of an employee compared to similarly situated employees in the agency or the relevant labor market.

A salary equity adjustment is authorized when the following criteria are met:

- An inequity in salary relationships has been found to exist with regard to the employee;
- The employee's most recent evaluation shows "Satisfactory" or better in each area of evaluation;
- The employee has been in the agency's employ for at least one year;
- The employee hasn't received an equity adjustment within the past two years;
- The adjustment doesn't result in a salary that is out of the salary range set for that position by the SAO; and
- The adjustment doesn't result in a change in job classification or salary group.

Equity adjustments may be granted as a single adjustment or in combination with a merit increase or bonus.

This provision is adopted in accordance with Section 3.07 in Article IX of the 2022-2023 General Appropriations Act (including any successor versions thereof) and Chapter 8 of the SAO's Texas Human Resources Management Statutes Inventory.

#### **4. DESIGNATION OF CLASSIFIED SALARY RATES**

The Council shall classify positions for employment in accordance with the provisions of the Position Classification Plan (GOVT. CODE 654.003) and Article IX of the General Appropriations Act. It is specifically provided that agencies may utilize classified position titles as appropriate. The Executive Director may determine the rate within the salary pay group for personnel employed under the Position Classification Plan.

#### **5. PROMOTIONS**

- A. A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility.
- B. An employee promoted to a position in Salary Schedule A will receive at least a \$30 per month increase to the base salary for a full-time employee or the minimum salary rate of the new salary group, whichever is higher. An employee promoted to a position in Salary Schedule B will receive at least a 3.4 percent increase or the minimum salary rate of the new salary group, whichever is higher. In addition, agency administrators have the discretion to grant a promoted employee a salary amount up to and including the maximum rate of the new salary group.

#### **6. DEMOTIONS**

- A. A demotion is a change from one classification title to another classification title in a salary group with a lower minimum salary rate. The salary of a demoted employee in Salary Schedule A will be reduced at least \$30 per month from the base salary for full-time employees. The salary of a demoted employee in Salary Schedule B will be reduced by at least 3.4 percent.
- B. An agency is not required to reduce a demoted employee's salary if the demotion was accepted in lieu of a layoff or if the employee applied for and accepted a position in a lower salary group.

## **7. SALARY REDUCTION FOR DISCIPLINARY REASONS**

The Executive Director may reduce a classified employee's salary for disciplinary reasons to a rate in the designated salary group no lower than the minimum rate. The employee's pay may be restored to any rate in the range up to and including his/her prior rate as such employee's performance improves.

## **8. JOB DESCRIPTIONS AND CLASSIFICATIONS**

All positions shall have an agency job description that includes the regular duties of the employee holding the position. The Executive Director has the right to assign other duties to appropriate employees in accordance with all applicable state and federal laws. Council job classifications are based strictly on job descriptions. The Council will promptly write descriptions and analyze job descriptions whenever new positions are created or the duties of an existing position are significantly changed. The Council will annually review job descriptions to ensure that they comply with the job classification schedule.

## **9. RECLASSIFICATION**

- A. All positions will be reviewed annually for compliance with the Position Classification Act and to verify that the duties performed by the employee conform to the classification assigned the position. Reclassification may occur as a result of classification audits, program reorganization by the Executive Director or the creation of new classifications by the State Classification Officer.
- B. On an annual basis, the Executive Director will review all job descriptions and determine whether each is an accurate reflection of the duties and responsibilities that the employee has at the time. If the review determines that a reclassification is warranted, the Executive Director will consider and approve the reclassification and make any necessary corrections in the appropriate job descriptions.

- C. A classified employee whose position is reclassified to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reclassification, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.

## **10. HIRING POLICIES**

- A. Oversight of the Particular Selection Process: The Executive Director will be responsible for overseeing the selection process for vacant positions and ensuring agency compliance with its selection procedures and all EEO requirements.
- B. The Council will maintain a comprehensive list of recruitment sources, including organizations representing minorities, women, and individuals with disabilities. All sources on the recruitment list will be sent a copy of the job vacancy notice, except when the vacancy is to be filled by promotion only, re-employment of former employees, or transfer of current employees. The agency will also post job vacancy notices on WorkinTexas.com.
- C. State Classification Job Descriptions as created by the State Auditor's Office comply with Chapter 654 of the Government Code. If the Agency modifies the State Classification Job Descriptions, the modifications must establish the quantifiable, objective, job related qualifications for the position to be filled by the agency. Modified job descriptions shall define all the functions that take 10% or more of the position's time, minimum qualifications and preferred qualifications in objective, job related, measurable and consistently applied terms. Functions shall list knowledge, skills and abilities including factual understanding and practical skills required or desired. Minimum qualifications are experience and education necessary to accomplish the tasks and responsibilities of the position. Experience refers to required or desired work experience and training needed for effective performance in the position. Education refers to the formal academic or vocational education required or desired for effective performance in the position. Experience and education should be substituted for each other to minimize a statistically measurable disproportionate impact on a particular class of employees. Preferred qualifications are experience and education desired to accomplish the tasks and responsibilities of the position. Preferred qualifications shall remain secondary in focus for selection and shall be able to be justified on the basis of business necessity or legitimate business objectives. Modified job descriptions need to be approved by the Executive Director.
- D. The job vacancy notice shall be developed from the job description and posted for at least ten working days. With the approval of the Executive Director, a job vacancy may be posted on an emergency basis for not less than five working days. Job vacancy notices will contain application deadlines, application procedures, and approved preferred qualifications.

- E. As soon as possible after a job vacancy occurs or is filled, the Chief Financial Officer will complete and deliver to the Texas Workforce Commission (TWC) the appropriate information prescribed by TWC pertaining to the job vacancy or placement.
- F. Before the posting of any agency position, initial and final selection criteria and their corresponding points shall be established. There will be no screening of applications before the initial and final selection criteria are established. These standardized criteria must be applied consistently between applicants. References will not be required with any application. References will only be obtained after the best applicant for the position has been selected. The applicant may then be asked to provide references. If requested and provided that the references are acceptable, the applicant can then be offered the position. Criteria not mentioned in the official posted job description shall not be used as a point of assessment.
- G. Applicants for a posted job vacancy shall submit a State of Texas Uniform Application for Employment and may submit a resume and other supporting materials. In no case, however, shall a resume be accepted in lieu of a standard application form. To be considered, the application must be received by the agency by the closing date of the job vacancy notice. The accuracy of statements contained in applications or resumes shall be certified by the signature of the applicant.
- H. Immediately following the closing date of the job vacancy notice, all applicants for the vacant position will be listed on an applicant log. The applicant log must, at a minimum, reflect the applicant's name, date of receipt of the application, whether the applicant was interviewed and hired, whether a rejection letter was sent, and have a copy of the interview selection matrix and questions used in the selection process.
- I. Applications, resumes, transcripts, letters of reference, and other similar documents submitted by applicants for the vacant position shall be retained in accordance with the agency's Texas State Record Retention Schedule or as required by the Civil Rights Division of the Texas Workforce Commission or the U. S. Equal Employment Opportunity Commission. Interview questions, answers, and notes will also be maintained.
- J. To determine who is eligible for interviews, all applicants will be screened using an approved (by the Executive Director) screening device or matrix based on quantifiable, lawful, job-related experience and educational qualifications as set forth in the job description. Directions on how to complete a matrix are provided on the matrix.
- K. If only current employees may apply for the vacant position, additional criteria may include job performance evaluations based on quantifiable measures and length of service with the agency.

- L. Applicants will be ranked based on their cumulative scores and the top applicants will be selected for interviews.
- M. The Executive Director will develop the interview questions, which shall be asked of all candidates interviewed.
  - i. Before interviews are conducted, all interview questions should be reviewed and approved for EEO compliance.
  - ii. Interview questions should focus on the applicant's professional and technical ability or knowledge to perform the particular job for which the candidate has applied. Appropriate answers should be anticipated prior to the interview that can be quantified for ranking applicants. Interview questions must be consistently applied, and related to the tasks and functions of the job as set forth in the job description. Interviewers should document answers for each candidate. The total score should be calculated for each interviewee.
- N. A second interview may be conducted. The nature and approval of the questions for the second interview should comply with the same requirements as the initial interview.
- O. If certain qualifications or work experiences are preferred, reviewed for EEO compliance and approved, the Executive Director may quantify these factors and add them to the total cumulative score. The candidate receiving the highest cumulative score on the approved rating schedule (application screening device, interview questions, exercises and/or tests) should be selected for the vacant position. The Executive Director will be responsible for verifying references, completing documentation, and communicating with the selected applicant to complete the hiring process. The Executive Director retains full authority for hiring a candidate to fill the vacant position.
- P. All instruments used in the hiring process will be reviewed by the Executive Director to ensure compliance with agency policies and procedures and EEO laws.
- Q. In general, the agency uses the whole-application approach which is a holistic approach to identify the best qualified applicants for the job based on information provided in the application and interviews.

## **11. NEPOTISM**

- A. Relatives may not report directly to the same supervisor or supervising relatives. No applicant for a position will be employed by the agency if the person would be in the chain of command of a relative. In addition, no relative may be in a position to affect the work, assignment or compensation of a relative or to otherwise

exercise influence over the employment of a relative. Any person affected by this section must notify the Executive Director of the relationship as soon as they become aware that they are a relative of an applicant or potential employee. If the person affected is the Executive Director, the Executive Director must notify the Council of the relationship before the person is offered employment at the agency. The agency employee responsible for screening the applications is responsible for informing the Executive Director if an application indicates any relationship covered by this section with a current employee.

- B. For purposes of this policy, a relative is defined as: parent (biological or adoptive), spouse, child (biological, adopted, stepchild, legal ward), grandparent or grandchild, brother or sister (biological or adopted), aunt or uncle, nieces, nephews, or first cousins; as well as any relationship defined above created as an in-law relationship by marriage or any person living in the same household as an employee.

## **12. CITIZENSHIP STATUS**

The Immigration Reform and Control Act of 1986 (I.R.C.A.) requires that any employee, including citizens as well as non-citizens, certify his or her citizenship status within three business days after hiring.

## **13. INDUCTION OF NEW EMPLOYEES**

Upon their first workday, all new employees will be informed as to their responsibilities and benefits as employees of the Council. New employees should be made to understand that they are welcome members of the agency's team and that every effort will be made to help them achieve their fullest potential in their new job. All new employees will be given the Personnel Manual and sign a statement of receipt.

## **14. NEW HIRE PERIOD**

Employees will be on new hire or probationary status until they have completed six (6) months service with the agency. Such new hire status employees are entitled to use the grievance procedure, but during their new hire periods they may be discharged or laid off at the sole discretion of the agency.

## **15. PART-TIME EMPLOYEES**

Regular full-time positions paid out of funds appropriated may also be filled by part-time employees. In computing the salaries of these employees, the rate of pay shall be proportional to the rates authorized for full-time classified employment or to the applicable exempt position.

**16. METHOD OF SALARY PAYMENTS**

Annual salaries appropriated shall be paid in twelve (12) equal monthly installments. Monthly installments to employees are made on the first working day of the month for the preceding month worked. Paychecks are given directly to the employee if the employee is not on direct deposit. A letter of authorization must be presented for any other person, other than the employee, to receive the check or earnings statement.

**17. JURY DUTY**

An employee is entitled to serve on a jury without any deduction from wages. Any compensation for jury service need not be accounted to the state by the employee. When asked to serve on a jury, the employee must notify their immediate supervisor as soon as possible. While reporting to or serving on a jury, employees are expected to return to work if released from the court and there exists four or more hours in the workday.

**18. LONGEVITY PAY**

- A. Longevity pay is earned at a rate of \$20 per month for every two years of state service, up to and including 42 years. Service need not be consecutive or with the same agency or department. Longevity credit begins on the first calendar day of employment and ends on the last calendar day of employment and is the sum of one or more periods of state employment. Prior state employment for the purpose of longevity pay must be verified by the Chief Financial Officer.
- B. Longevity pay is provided to all full-time employees who are not on leave without pay the first workday of the month and who have at least two years of lifetime service credit. Part-time employees do not receive longevity pay on a proportional basis. Those ineligible for longevity pay include members of the Legislature, individuals elected to public office, an independent contractor or an employee of an independent contractor, temporary workers, officers or employees of public junior colleges, academic employees of institutions of higher education, and employees receiving hazardous duty pay. The Comptroller of Public Accounts is responsible for issuing rules and procedures for the administration of longevity pay.

**19. FAIR LABOR STANDARDS - OVERTIME AND COMPENSATORY TIME**

- A. Definitions:
  - i. FLSA Overtime - overtime that is accrued at the rate of 1.5 hours for every hour worked over 40 in a workweek.
  - ii. State Compensatory Time - time which is accrued at the rate of one hour for every hour over 40 in a workweek earned through a combination of paid

leave, paid holidays, and hours worked after subtracting any FLSA overtime hours worked.

- iii. Exempt employees - Executive, administrative, professional and other employee positions defined by FLSA regulations that are exempt from overtime provisions. Exempt positions are reviewed on an annual basis and upon job duty changes for correct status.
- iv. Non-Exempt employees - Personnel who are not eligible for exemption due to the nature of their duties and responsibilities under FLSA regulations.

B. General Provisions for non-exempt employees - i.e., those who are subject to FLSA overtime provisions:

- i. The Executive Director must authorize overtime hours in advance.
- ii. The Executive Director, in cooperation with employees, will schedule work patterns to eliminate, where possible, the accrual of compensatory time and overtime. For example, if it is necessary for an employee to work more than 8 hours on a specific day, the employee's work hours should be reduced on another day within the same workweek so that the actual working hours do not exceed 40 for the week.
- iii. For employees who travel in connection with their work, the workday including travel should not exceed 8 hours, if possible. If travel involves an overnight stay, nonexempt employees will earn straight time (hour for hour) for any travel before or after the regular workday. All state compensatory time, other than that earned from working state holidays, should be used within 30 days of accrual, if possible, but must be taken within twelve months.
- iv. When it is necessary for an employee to work FLSA overtime, the employee will be compensated for those hours in excess of 40 by accrual of FLSA overtime at the rate of one and one-half times the hours worked. All FLSA overtime accumulated should be taken within 30 days of accrual, if possible, but must be taken within twelve months.
- v. In accordance with Section 659.018 of the Government Code, no employee may accrue state compensatory time for work conducted at any location other than the Agency's office unless pre-approved by the Executive Director.
- vi. Any paid leave or holidays taken are not counted as hours worked in determining overtime hours in the above paragraph.

- vii. In situations in which the employee has not actually worked more than 40 hours in a workweek, but the total of hours worked and hours of paid leave or paid holidays exceeds 40 hours, the employee shall be allowed to take state compensatory time off for the hours over 40.
  - a. **Example 1:** Employee works 12 hours first day; on second day works 4 hours; on third, fourth, and fifth days works 8 hours each day and no paid leave time is taken and no holiday occurs during the week. Employee has worked 40-hour week. There is no FLSA overtime or state compensatory time balance.
  - b. **Example 2:** Employee works 8 hours first day, takes 8 hours vacation second day, works 8 hours third day, works 12 hours fourth day, and 12 hours fifth day. Employee has actually worked only 40 hours so no compensatory overtime under FLSA is incurred. Since the total of hours actually worked (40) and paid leave (8) exceed 40 hours, employee is entitled to 8 hours state compensatory time off which must be taken within 12 months following end of the work period in which it was accrued.
- viii. In situations where the employee actually works more than 40 hours in a workweek and also takes paid leave during the week, the employee shall be allowed state compensatory time off in an amount equal to the paid leave time taken and will be compensated for those hours actually worked in excess of 40 by the accrual of FLSA overtime.
  - a. **Example 3:** Employee takes 8 hours vacation first day, works 12 hours second day, 12 hours third day, 12 hours fourth day, and 8 hours fifth day. Employee actually worked 44 hours so has six hours (4 x 1 1/2) accrued FLSA overtime which can be credited to the employee's FLSA balance. In addition, employee is credited 8 hours state compensatory time for the 8 hours vacation (recorded hours in excess of 40 hours actually worked), which must be taken during the 12 month period following the end of the work period in which it was accrued.

C. General Provisions For Exempt Employees:

- i. Employees exempt from FLSA overtime provisions will not accrue overtime or state compensatory time, excluding state holiday compensatory time earned for working on a State holiday.
- ii. Employees exempt from FLSA overtime provisions will receive compensation for a full day's work for any day in which less than 8 hours are actually worked.

- iii. Deductions may be made for absences of a day or more caused by sickness or disability if the deduction is made after exhaustion of paid sick leave or workers' compensation benefits. An exempt employee's pay may be reduced for absences of less than one day for personal reasons or because of illness or injury because: (I) permission for its use has not been sought or has been sought and denied; (II) accrued leave has been exhausted; or (III) the employee chooses to use leave without pay.
- iv. Deductions from the pay of an exempt employee for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

## **20. EMPLOYEE RETIREMENT SYSTEM (ERS)**

- A. **General Provisions:** Upon employment with the Agency, an employee becomes a participant in the ERS. The Texas Constitution governs employee contributions to the ERS. An employee's retirement contributions are on a pre-tax basis. In addition, the state must contribute at least 6.5% but not more than ten percent of the total compensation paid to participants in the ERS. Benefits paid at retirement are based on an employee's age at retirement and length of state service. Detailed information on the various funding formulas used to calculate state employee benefits can be found on the ERS website at [www.ers.state.tx.us](http://www.ers.state.tx.us). Employees nearing retirement age who wish to know their particular retirement formula should contact the Agency's Chief Financial Officer.
- B. **Refund:** Employees may receive a refund of their retirement contributions plus accrued interest if the employee is off the state payroll for a full calendar month following the month in which the employee terminates employment. An employee must contact the Employees Retirement System for information on how to request a refund of retirement contributions. Normal processing time is approximately 45 to 60 days after the employee's last month of employment. Refund of contributions is a lump-sum distribution from a qualified pension plan. Interest earned on retirement accounts is subject to federal income tax.
- C. **Group Insurance:** In addition to the retirement benefits, the state will contribute a designated amount, per month, for insurance coverage under the uniform group insurance program during the fiscal year. The state also provides a lump sum \$5,000 death benefit for retired persons, payable to a designated survivor, or otherwise according to the laws of descent and distribution.
- D. **Salary at the Time of Hire:** State agencies have the authority to determine, at the time of initial employment, the salary rate within the applicable salary group for all classified positions. Initial employment includes rehires and interagency transfers.

## **21. TEXFLEX**

- A. TexFlex is a flexible employee benefits program that offers participants a way to save taxes on their group insurance premiums, unreimbursed health care expenses, and dependent care expenses. The plan takes advantage of certain federal income tax laws that allow an employee to pay his/her share of the cost of these benefits on a tax-free basis. This works by "redirecting" part of the employee's pay before federal income or social security taxes are computed.
- B. The TexFlex Plan is divided into three parts; a commuter spending account, a health care reimbursement account, and a dependent care reimbursement account. An employee may participate in each part by completing a TexFlex election form as a new employee, or during the annual enrollment period with an effective date of September.

## **22. DEFERRED COMPENSATION**

- A. State employees have the opportunity to participate in a deferred compensation plan in addition to an established benefit plan for purposes of retirement. Under such a plan, employees may defer a part of their pay for investment in a qualified "investment product" and will not be taxed on this amount until they receive a distribution from the plan.
- B. The deferred compensation plans also have "catch-up" provisions that allow employees who meet the eligibility requirements to make up for lost time. For state employees, there are two types of plans available: a 401(k) and a 457(k).
- C. 401(k) Plan:
  - i. The 401(k) plan allows employees to defer from 1 percent to 99 percent of 401(k) eligible compensation or the IRS limited amount each year, whichever is less. This plan allows employees to borrow against these funds as well as roll them over to another investment vehicle such as an individual retirement account.
  - ii. An employee who begins state employment on or after January 1, 2008, automatically participates in a 401(k) plan unless the employee elects not to participate in the plan. The contribution is made by automatic payroll deduction and represents 1 percent of an employee's pay. Unless otherwise directed by the employee, this contribution is placed in a default investment product selected by the board of trustees for ERS.
  - iii. Employees participating in a 401(k) plan under this new legislation may elect to end participation in the 401(k) plan, to contribute to a different investment product, or to contribute a different amount to the plan.

- iv. A state agency participating in a 401(k) plan is required to inform new hires of their automatic enrollment in a 401(k) account and their right to opt-out of enrollment. This information should be included as part of the new employee orientation process. State agencies participating in a 401(k) plan shall maintain a record of a new hire's acknowledgment of receipt of information regarding the ability to opt-out of enrollment in a 401(k) plan.

D. 457 Plan:

The 457 plan is a voluntary retirement plan that allows employees to defer a dollar amount of their salary toward retirement savings and pay taxes later on the contributions and earnings. Employees decide how to invest their contributions among choices offered in the plan. Employees must elect a dollar amount for a 457 plan with a minimum of \$20 per month. Deferrals must not exceed the yearly maximum set by the IRS.

**23. BENEFIT REPLACEMENT PAY**

The employee benefit of state-paid 5.85% employee portion of social security ceased on September 1, 1995. A benefit replacement pay, not to exceed 5.85% of the first \$16,500 annual earned income, will be paid to employees working on or before August 31, 1995, to offset the loss of state-paid social security benefits. Leveling is available for employees who earn more than \$16,500.00 annually to keep them from having a drop in take-home pay after the maximum benefit replacement pay is reached. With benefit replacement pay leveling, the state's contribution is pro-rated evenly over the calendar year.

**24. DIRECT DEPOSIT**

Direct deposit is mandatory for all Agency employees. An exception exists for classified employees below group A8 or any employee who does not have a qualifying account for electronic funds transfer.

**25. HEALTH AND OTHER INSURANCE**

- A. Health coverage is automatically extended to every full time state employee unless the employee refuses, in writing, to accept it after the first initial 60-day waiting period. See the Chief Financial Officer for cost to employee for group health insurance.
- B. During the initial waiting period for a new hire, the employee may elect optional coverages.

- C. The state only pays one-half of the employee's contribution for a part-time employee (less than 30 hours per week).
- D. **Employees who use tobacco are assessed an additional \$30 Tobacco Premium.**
- E. The State of Texas provides comprehensive group insurance coverage to state agency employees, retirees, and their eligible dependents. Additionally every employee is automatically covered with \$5,000 in life insurance and \$5,000 of accidental death and dismemberment coverage.
- F. The following optional programs are also available to each state employee: (1) health coverage for spouse and eligible dependents, (2) additional life insurance, up to four times the employees annual salary, (3) dependent life insurance coverage of \$5,000, (4) additional accidental death and dismemberment coverage, up to \$200,000, (5) short and/or long term disability benefits, (6) dental coverage and (7) dental coverage.
- G. These additional coverage options are out-of-pocket expenses deducted from the employee's monthly paycheck.

## 26. **WORKERS COMPENSATION**

- A. State employees are covered by worker's compensation for injuries/accidents/illnesses sustained on their job or in the performance of their duties. On-the-job injuries/accidents/ illnesses, no matter how minor, must be reported to the supervisor and the Executive Director in accordance with this policy. The employee should not file a claim against his/her insurance if the injury/accident/illness is work related.
- B. The State of Texas is self-insured, and the State Office of Risk Management (SORM) administers the state's workers compensation system for most state employees. To receive payments a state employee must suffer a compensable injury in the course of employment. An occupational disease is considered an injury.
- C. An employee or person acting on his or her behalf must notify the employer of an injury within 30 days after the incident occurred or after the employee knew or should have known that the injury may be related to his or her employment. Failure to file notice relieves the employer and their insurance carrier of liability unless the employer has actual knowledge of the injury. Claims for compensation must be filed with the SORM within one year of when the injury occurred or, if the injury is an occupational disease, when the employee knew or should have known the disease was work-related. Claims for death benefits must be filed with SORM within one year of the employee's death.

- D. The Council is committed to maintaining a safe and healthy work environment for its employees through a Return-to-Work (RTW) program. The RTW program provides opportunities for an employee injured on the job to return to work. Any employee who has a work-related injury or illness is eligible to participate in the RTW program.

In situations where the injured employee's physical restrictions limit their ability to return to work in a full capacity, the RTW program will provide temporary modified duty to allow the employee to perform their regular job. Through the RTW program, an alternate temporary work assignment that meets the injured worker's capabilities may also be provided when possible. For example, if an employee's regular department cannot reasonably accommodate the employee's work restrictions, a modified duty assignment may be considered in another department. An employee's salary may also be adjusted in accordance with the modified functions or modified duty position. The employee placed in a modified duty position will be paid a salary that is equivalent to the salary of other employees holding the same position.

An employee performing any full or modified duties under this policy is subject to the usual work performance standards of that job. Employees are also subject to removal from modified duty and/or disciplinary action in accordance with this personnel manual.

Employees who are temporarily restricted from performing their regularly assigned job duties due to a work-related injury or illness and can safely return to work will be offered employment according to the RTW program. In the absence of other legal or policy limitations, employees who can return to full or modified duty but choose not to do so may be subject to termination.

Before an employee is offered modified duty associated with an injury or illness sustained in the course and scope of employment, the employee's treating doctor must outline the employee's physical activity restrictions so that the agency can determine if modified duty is available and appropriate. The treating doctor will complete and provide a Work Status Report (DWC-73) to the injured employee, the agency, and the claim adjuster. The Work Status Report establishes the extent and expected duration of the temporary work restrictions and provides a basis for any modified duty.

Employees who have modified duty due to work-related injury or illness shall be required to undergo periodic evaluations by the treating doctor to assess any changes in work status or job restrictions. The results of these evaluations shall be reported in writing to the Council and any other appropriate agency.

Employees must facilitate the successful delivery of any requested documentation to the Council.

The Council will provide appropriate guidance and information to facilitate the employee's return to full duty (including addressing the need for any temporary or permanent workplace accommodations) once the employee is released to return to work at full capacity.

An employee is limited to 90 days of modified duty work in any rolling 12-month period. If doctor-provided evidence shows that the employee may be able to return to their regularly scheduled position within an additional 90 days, the employee may be allowed to work another 90 days of modified duty in the same rolling 12-month period upon approval by the Executive Director. If the employee is not able to return to their regularly assigned position before the exhaustion of permitted days of modified duty, they may be subject to termination.

- E. Additional information regarding an employee's rights and obligations under Texas' Workers' Compensation law may be obtained by contacting the Agency's Chief Financial Officer or the State Office of Risk Management at:

**State Office of Risk Management  
William P Clements Building  
300 West 15<sup>th</sup> Street, 6<sup>th</sup> Floor  
Austin, TX 78711  
(512) 475-1440  
[www.sorm.state.tx.us](http://www.sorm.state.tx.us)**

## **27. OTHER PAYROLL POLICIES**

- A. Garnishments: By law, the agency is required to honor legal garnishments of employees' wages or salaries. The Executive Director will give the employee written notification of a garnishment received by the agency.
- B. Advances on earned or unearned wages and salaries are not made.
- C. Paychecks that employees do not claim within two weeks of the date issued are mailed by certified mail to the employee's last address of record.
- D. Employees are to report checks lost or otherwise missing to the agency's Chief Financial Officer immediately so that a stop payment or voided warrant order may be initiated.

## **28. EXPENSE REIMBURSEMENT**

Employees are reimbursed at the approved rate established by the Comptroller of Public Accounts within IRS guidelines for personal car mileage to conduct state business. Travel must be pre-approved by the Executive Director.

## **29. CRIMINAL RECORD CHECKS ON EMPLOYEES AND APPLICANTS**

The agency may conduct public criminal history record checks through the Texas Department of Public Safety on all employees. The information obtained will be reviewed by the Executive Director. Any criminal action reported will be weighed as to its impact on the appropriateness of the employee working for this agency.

## **II. CONDITIONS OF EMPLOYMENT**

### **1. OFFICE HOURS**

Regular full-time nonexempt employees are required to work 40 hours per week. Office hours are 8 a.m. to 5 p.m. Monday through Friday. The office must be staffed during regular working hours. All state agencies are required to remain open during the noon hour each working day with at least one person on duty to accept calls, receive visitors and transact business. Chapter 658 of the Government Code provides for staggering the workday of personnel as long as the agency remains open between 8 a.m. and 5 p.m. and its operations are not disrupted (flex-time). The Executive Director may adopt an agency policy governing the use of flex-time and employees wanting flexible schedules must comply with any such policy. Flex-time schedules may be altered only with approval by the Executive Director. The Executive Director may change or cancel flex-time based on the needs of the office.

### **2. THE OFFICE AND TELECOMMUTING**

Pursuant to Section 658.010 of the Government Code, the Agency's office shall be the regular assigned place of employment for an employee unless the employee is travelling (for work) or receives prior written authorization from the Executive Director to work elsewhere. The Executive Director may adopt an agency policy authorizing an employee to work regularly or temporarily from another location within this state, including the employee's personal residence, if doing so would not interfere with or impose an unreasonable burden on agency operations. Employees wanting to work from home must comply with any such policy adopted by the Executive Director. Employees may not have a regular assigned place of employment outside of Texas.

### **3. POLITICAL AID AND LEGISLATIVE INFLUENCE PROHIBITED**

- A. Money appropriated to the Agency or under the Agency's control cannot be used to influence the outcome of any election or the passage or defeat of any legislative measure. This prohibition does not apply to any Agency employee furnishing public information to the public, other state agencies, or to any member of the Legislature or legislative committee upon request.
- B. No state employee may be a paid lobbyist of any individual, firm, association or corporation. However, a part-time employee may serve as a lobbyist on behalf of industry, profession, or association so long as such entity is not related to the agency with which he or she is employed.
- C. Except as authorized by law, none of the funds appropriated to this agency shall be expended in payment of membership dues to an organization on behalf of the agency or an employee of an agency if the organization pays all or part of the salary of a lobbyist.
- D. State employees are expressly prohibited from using state-owned vehicles in connection with any political campaign or any personal or recreational activity.

#### **4. USE OF ALCOHOLIC BEVERAGES**

Employees may not use alcoholic beverages while on duty. State funds appropriated for travel expenses may not be expended for alcoholic beverages. Employees may be terminated for using alcohol while on duty.

#### **5. USE OF STATE PROPERTY**

It is the policy of this agency that the use of agency equipment, property, or supplies for anything other than state purposes is NOT allowed. By way of example, the following are offered as interpretations of the policy:

- A. The use of the agency's copy machines for copying any items, which are not directly required in the employee's work, is not allowed. An exception will be allowed when an employee needs to copy one to five pages of personal papers on an occasional basis. If more than five pages are needed, the employee must use other resources.
- B. Computers (General):
  - i. The use of agency computer equipment and related supplies and materials are to be used for state purposes only. Computers should be locked or completely shut down at the end of every workday.
  - ii. Passwords should be kept secure, and accounts should not be shared with any other people other than supervisors or other authorized personnel. Authorized users are responsible for the security of passwords and accounts.

- iii. All servers and workstations should be secured with a password-protected screensaver set at 30 minutes or less.
- C. E-mail - This policy applies to e-mail used with an agency address (firstname.lastname@bhec.texas.gov). Receiving or sending of personal e-mail on the internet through a personal e-mail account such as Yahoo or Gmail is prohibited because of the danger of computer viruses. Generally, e-mail on a state address should be used only for legitimate state business; however, brief and occasional e-mail messages of a personal nature may be sent and received if the following conditions are met:
- i. Personal use of e-mail is a privilege, not a right. As such, the privilege may be revoked at any time and for any reason. Abuse of the privilege may result in appropriate disciplinary action.
  - ii. Employees need to keep in mind that all e-mail can be recorded and stored along with the source and destination.
  - iii. Employees have no right to privacy with regard to e-mail. Management has the ability and right to view employee's e-mail.
  - iv. Recorded e-mail messages are the property of the agency and therefore the taxpayers of the State of Texas. They are subject to the requirements of the Texas Public Information Act and the Agency's record retention schedule.
  - v. Personal e-mail should not impede the conduct of state business; only incidental amounts of employee time comparable to reasonable breaks during the day should be used to attend to personal matters.
  - vi. Racist, sexist, discriminatory, threatening or otherwise objectionable language is strictly prohibited.
  - vii. E-mail should not be used for any personal monetary interests or gain. Employees should not subscribe to mailing lists or mail services that are strictly for personal use and should not participate in non-work related newsgroups or chatrooms.
  - viii. Employees, upon receiving personal e-mail, should read it and delete it. No storage of personal e-mail is permitted. Employees may copy up to five pages but must delete all personal e-mails.
  - ix. Generally, attachments that are sent with emails to outside parties should be in PDF, not Word. This is to ensure that the document cannot be changed. Interoffice e-mails may use attachments in Word. Any types of exceptions should be preapproved by a manager

- D. Internet Policy: Generally, internet use should be for legitimate state business only; however, brief and occasional personal use (i.e., surfing, browsing) is acceptable if the following conditions are met:
- i. Like e-mail usage, personal use of the internet is a privilege, not a right. As such use should be limited (during breaks or lunch, not on State time). The privilege may be revoked at any time and for any reason. Abuse of the privilege may result in appropriate disciplinary action.
  - ii. Employees need to keep in mind that all internet usage (site histories) can be recorded and stored along with the source and destination.
  - iii. Employees have no right to privacy with regard to the internet use. Management has the ability and right to view employee's usage patterns and take action to assure that internet resources are primarily devoted to state business.
  - iv. The internet path record is the property of the agency and therefore the taxpayers of the State of Texas. Such information is subject to the requirements of the Texas Public Information Act and the laws applicable to the State of Texas record retention schedule.
  - v. Management should work with employees to determine the appropriateness of using the internet for professional activities and career development. Written permission is needed and should be obtained for these activities, or the activities should be included in the employee's job description.
  - vi. Personal use of the internet should not impede the conduct of state business; only incidental amounts of employee time comparable to reasonable breaks during the day should be used to attend to personal matters.
  - vii. Accessing, copying, posting or sharing any racist, sexist, discriminatory, obscene, threatening or otherwise objectionable material (i.e., visual, textual, etc.) is strictly prohibited.
  - viii. The internet should not be used for any personal monetary interests or gain.
  - ix. Employees must not intentionally use the internet facilities to disable, impair, or overload performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user.
  - x. Employees may play computer games on agency computers that come with the system and are not internet based (i.e. Internet Spades), and may be

played only on the employee's own time (e.g., lunch, breaks or before or after regularly scheduled work hours for that employee).

- xi. Employees may not download and/or store any non-state agency business materials.
- xii. Employees may print not more than 5 pages of internet non-state agency business materials per week.

E. Viruses: It is the policy of the Agency to take reasonable precautions to protect its computer equipment and software from computer viruses at all times. Therefore:

- i. The Executive Director or designated employee shall be the only employees authorized to load software onto agency computers and related equipment.
- ii. Employees who have reason to believe that their computer may have a virus should report that information to the Executive Director or designated employee immediately.
- iii. Warnings concerning new viruses will be received by the agency from DIR or IT staff. Staff shall read any such warnings and take such warnings into account when using their computer or the internet.
- iv. Anti-virus software on individual machines should be run daily to ensure that all upgrades have been received.
- v. No material, especially .exe programs, shall be downloaded from the internet or from e-mail attachments other than those which are strictly required for the position or computer operation.
- vi. All unauthorized materials found on any computer by Information Resources personnel will be reported to the Executive Director. Staff will be subject to disciplinary action for violations of the agency policy.

F. Telephones

- i. Employees may not use state telephones for personal long distance calls at any time. The Executive Director will conduct periodic audits of state long distance charges per telephone extension to ensure that no employee is abusing this policy.
- ii. Employees may make and receive local personal calls provided that such calls do not disrupt or interfere with official state business and are kept to a minimum duration and frequency. Personal calls should be made during the lunch hour and on breaks.

- iii. Office Telephones. Employees **may** use the office telephones for personal calls only when necessary. All such calls should be kept to a minimum amount of time. In order to prevent unnecessary personal calls to the office, staff should inform personal callers of this office policy. All personal calls which the staff initiate must be during their lunch period or on their two daily breaks. Being on a personal call at any other time should occur only if a personal call is received. Staff may not use state telephones for personal long-distance calls, unless a personal charge card is used. Monthly printouts of long-distance calls made from the office identify the use of individual telephone extensions for all long-distance calls.
- iv. Personal Cell Phone. Employees **may** use personal cell phones in the office only when necessary. All such calls should be kept to a minimum amount of time. In order to prevent receiving unnecessary personal cell phone calls at the office, staff should inform personal callers of this office policy. All personal calls which the staff initiates must be during their lunch period or on their two daily breaks. Being on a personal call at any other time should occur only if a personal call is received. Personal calls made on personal cell phones during lunch periods or the two daily breaks which are made outside the office are outside the scope of this policy.

## **6. GRIEVANCE PROCEDURE**

- A. If an employee has a work-related grievance, he/she should submit it in writing to his/her immediate supervisor. Personality conflicts and behavior problems are not grounds for grievance. The supervisor will meet with the employee within five (5) working days, discuss the grievance, and submit a written answer if requested.
- B. If the employee is dissatisfied with the decision above, the employee may submit, within ten (10) working days, the written grievance along with the supervisor's decision to the Executive Director. The Executive Director will discuss the decision, within ten (10) working days, with the employee and supervisor and render a decision. The Executive Director, at his/her discretion, may offer the employee an opportunity to use alternative dispute resolution. If the employee is dissatisfied with the decisions reached above, he/she may then take the written grievance to the Council for its consideration. To do this, the employee must request that the grievance be placed on the next regularly scheduled Council meeting and present it at that time.
- C. To the extent allowed by law, the agency will maintain the confidentiality of all information concerning work-related grievances.

## **7. REDUCTION-IN-FORCE AND RECALL POLICY**

- A. It may be necessary in times of limited/reduced funding or a change in agency programs to effect a reduction-in-force. This policy is intended to retain the most productive employees in terms of job performance and job-related work experience, while at the same time ensuring compliance with EEO law and incorporate the principles of the agency's approved affirmative action plan. The Executive Director will develop, implement, and periodically review a reduction-in-force plan. The following factors will be used as a means of determining EEO compliance:
- i. The reduction must be objective in the sense that it can be measured in unbiased quantifiable terms as opposed to subjective judgments.
  - ii. The reduction should be job-related insofar as it is directly related to the job to be performed.
  - iii. The reduction should be consistently applied in all layoff and recall decisions.
  - iv. The reduction should not have statistically measurable disproportionate impact on the protected class status of employees, unless such an impact can clearly be justified on the basis of business necessity.
- B. The criteria for determining a layoff and recall are as follows: (a) the employee's ability to effectively perform the functions of the job based on demonstrated job skills as documented by formal performance evaluations, (b) the total number of years the employee has worked for the Agency.
- C. Each of the above referenced criteria will be independently quantified with a numerical score. The score assigned to each criteria standing alone will not be greater than the score of the other criteria. The assigned numerical score for years of service will not be so great as to perpetuate past or present underutilization or exclusion of protected classes. The decision as to which employees are to be laid off within a particular job classification and organizational unit should be based on the total combined score of each of the two criteria listed in part (C) above. The employees with the lowest total score are subject to layoff. Conversely, laid off employees with the highest total score will be recalled when economic conditions permit. Prior to any such layoff or recall, the equations stated above will be posted for use of management and for those affected by the layoff and recall. An employee subject to a reduction in force may appeal the decision in writing, using job-related criteria, to the Executive Director.

## **8. PERFORMANCE APPRAISAL**

- A. General Standards: The employee performance appraisal system will evaluate past performance and provide the employee opportunity for professional growth. The system will evaluate employees' performance and work related conduct and

implement a personnel improvement plan based on job related functions, customer service and agency needs. The Executive Director is responsible for overseeing the performance evaluation process and ensuring EEO compliance with the evaluation procedures. The Executive Director shall develop and utilize standard performance evaluation forms. The format of this form shall be tailored to reflect lawful, job-related performance standards and production expectations and compliance with policies and procedures. A space will be reserved on the performance evaluation form for employee comments.

B. Guidelines:

- i. New employees or those employees who have been promoted, demoted, reclassified or have received a lateral move will receive an initial performance appraisal at the end of their first six months.
- ii. All classified employees who have been employed by the agency for a minimum of six months will normally receive a performance appraisal once per the fiscal year for their specified job classification. Performance appraisals may be made at other times when deemed necessary by the Executive Director or supervisor.
- iii. The performance appraisal is based upon a rating system. Each employee's performance evaluation shall be determined in accordance with job-related standards, job-related conduct and customer service. An employee's performance rating shall be based on his/her score as reflected by the evaluation. All performance evaluation ratings are to be substantiated by specific documentation or specific examples.
- iv. For performance areas rated below a 3.0 (see table below), the employee will receive measurable actions that shall be listed to increase job knowledge, improve skills or correct performance difficulties.
- v. Recommendations for merit raises will be considered in accordance with the procedures listed in Part I of this manual pertaining to merit salary increases.
- vi. The results and rating will only cover the period of employee's job related performance from the last formal appraisal or from the date of position status change to the end of the six-month or annual period, whichever is applicable.
- vii. Performance Ratings - the appropriate ratings for employee performance levels of specific job duties/responsibilities are as follows:

<u>Score</u>	<u>Term</u>	<u>Definition</u>
1	Unsatisfactory	Consistently performs below required minimum standards.

2	Needs Improvement	Meets most of the established requirements but fails to meet some minimum standards.
3	Satisfactory	Consistently meets minimum standards.
4	Exceeds	Exceeds expectations more often than instances in which the employee meets minimum established standards.
5	Outstanding	Consistently exceeds expectations throughout review period.

- viii. The Executive Director or supervisor may conduct a special performance evaluation at any time there is evidence that an employee's overall performance is below standard for a period of three consecutive months based on production standards established for the employee's respective classification.
- ix. The Executive Director will review and sign all performance appraisals to ensure compliance with the Personnel Manual, including EEO compliance and that the appraisal is based on objective, job related, measurable and consistent criteria.
- x. If written comments are made by the employee, the performance appraisal will be resubmitted to the Executive Director for review.

C. Procedures for Performance Appraisal:

- i. Prior to the evaluation meeting, the supervisor will complete the performance appraisal form by filling in the performance measures as listed and rate the employee on each measure providing documentation and/or comments as required. The "Comments" area of the form allows for details of why an employee has received a certain rating.
- ii. The supervisor will discuss the appraisal with the Executive Director and then provide a copy of completed performance appraisal form to the employee and meet with the employee.
- iii. During the appraisal meeting, the supervisor and the employee will discuss each performance measure. If discussion warrants a change in rating, the Executive Director will be notified in writing.

- iv. Employees may appeal their performance evaluation rating to the Executive Director. The decision by the Executive Director is final. If the Executive Director is the rater, the employee may appeal his or her performance rating to the Council. An employee must submit a written appeal request, setting forth the job-related reasons for changing the performance rating. To change a performance rating, the employee must present substantial job-related factors that justify the change. The basis for a decision to change or retain a particular rating must be in writing, following a conference with the employee and the director or supervisor conducting the evaluation. The Executive Director shall retain a document log for all formal appeals and resolutions of formal complaints as well as personnel issues raised by the employees in such appeals or complaints.
- v. The employee shall acknowledge reading the performance appraisal by signing the form and may respond in the employee's comment section.
- vi. The employee will receive a copy of his/her final performance appraisal. The original will be placed in his/her permanent file.
- vii. The Executive Director shall review the evaluation process on an as needed basis and revise the process to comply with current EEO law and to improve administrative efficiency.

## **9. DISCIPLINARY ACTIONS AND APPEAL**

- A. The Executive Director will be responsible for overseeing the disciplinary action process for employees and ensuring compliance with the disciplinary actions procedures and EEO laws. The primary supervisor for each division or department may recommend disciplinary actions to the Executive Director, but the Executive Director shall have final authority for determining and imposing all disciplinary actions.
- B. Disciplinary actions must be based on job performance or job related conduct.
  - i. Job performance is defined as the employee's ability to effectively perform the functions of the job, and should be determined based on demonstrated skills as documented by objective, job related, quantifiable performance evaluations that are consistently applied.
  - ii. Job related conduct is defined as compliance with the Agency's policies, procedures, and work rules that can be objectively defined, measured and documented.
- C. Maintaining objectively defined, consistently applied documentation of performance and job related conduct establishes the framework for instituting corrective action where employees have violated policies, procedures, and/or work

rules or failed to meet performance standards. One of the most effective tools that document job performance and compliance with the Agency's policies, procedures, and work rules is the performance evaluation.

- D. Specific job related performance or conduct which represents grounds for disciplinary action includes, but is not limited to the following:
- i. Acts of insubordination that involve the refusal to comply with agency policies and procedures or supervisory instructions and orders related to the performance of assigned job duties or responsibilities.
  - ii. Misuse or theft of agency funds or property.
  - iii. Below standard performance of assigned job duties or responsibilities.
  - iv. Conduct that interferes with the performance of assigned job duties and responsibilities.
  - v. Conduct that violates state or federal laws involving felonies or misdemeanors (other than minor traffic violations) related to the employee's official capacity as an agent of the agency, or adversely impacts the public image of the agency.
  - vi. Conduct that is prohibited by agency's policies or procedures.
- E. The type of disciplinary actions that may be taken include, but are not limited to, the following:
- i. **Written Warning:** An employee may be issued a written warning, which shall include the facts and circumstances resulting in the written warning. The written warning shall be placed in the employee's personnel file following a counseling session between the employee and the supervisor issuing the warning.
  - ii. **Reprimand:** A reprimand shall be in writing and shall include the facts and circumstances resulting in the reprimand. The reprimand will be placed in the employee's personnel file following a counseling session between the employee and the supervisor issuing the reprimand.
  - iii. **Suspension:** An employee may be suspended without pay for up to five working days. The facts and circumstances resulting in the suspension shall be documented in writing and placed in the employee's personnel file following a counseling session between the employee and the supervisor responsible for suspending the employee.

- iv. Involuntary termination: The facts and circumstances resulting in an employer's involuntary termination shall be documented in writing and placed in the employee's personnel file following a counseling session between the employee and the supervisor responsible for terminating the employee.
- F. The Executive Director may choose to begin the disciplinary action process at any time. However, for conduct which is of a nature that is potentially correctible by the employee and not so undesirable as to warrant immediate suspension or termination, the Executive Director shall apply progressive discipline, provided that:
  - i. In applying disciplinary action, the type of discipline selected must be consistent for all like or similarly situated employees under like or similar circumstances. Therefore, prior to taking disciplinary action the supervisor must identify the type of discipline previously applied to other employees based on like or similar job performance or prohibited conduct.
  - ii. Where no like or similar employee has previously been disciplined for like or similar job performance or prohibited conduct, the type of discipline shall be limited to a written warning or a letter of reprimand for the first offense, except for conduct involving theft of agency's funds or property, or violations of state or federal laws involving felonies or misdemeanors (other than minor traffic violations).
- G. Employees may appeal a disciplinary action imposed by the Executive Director to the Council. An employee must submit a written appeal setting forth the job related reasons for changing the disciplinary action. To change disciplinary action, the employee must present substantial job-related factors that justify the change. The basis for a decision to change or retain a particular disciplinary action must be in writing, following a conference with the employee, the employee's supervisor, and the Executive Director.
- H. The Agency shall maintain a document log for all formal appeals and their resolutions, as well as personnel related issues raised by the employees in such appeals or complaints.
- I. The Executive Director may revise the disciplinary action process to comply with current EEO law and to improve efficiency.

## **10. SMOKE-FREE WORKPLACE**

This is a smoke-free workplace. Smoking is permitted during morning and afternoon breaks and during the lunch period but only in designated areas outside the building. Smoking is not permitted in any place within the agency premises, including balconies.

## 11. SOLICITATION

Unauthorized solicitations of employees and visitors on agency premises are strictly prohibited. Employees may solicit among themselves for such things as gifts for employees for special events (resignations, retirements, weddings, and births).

## 12. GAMBLING

The agency believes that gambling among its employees can lead to poor morale, hard feelings and financial hardship. Therefore, gambling is prohibited on agency premises and will be a cause for disciplinary action. Gambling includes card playing, dice, lotteries, betting on horse races, sports betting, or any other kind of wagering. Any employee who is guilty of selling or attempting to sell any wagering pools will be subject to discipline. Any employee found guilty of acting as a bookmaker will be subject to discharge.

## 13. DRUG-FREE WORKPLACE

- A. **General Policy:** The distribution, possession, or use of illegal drugs, alcohol, and/or inhalants at the workplace or during work hours is strictly prohibited. The misuse of drugs, alcohol, and/or inhalants on the job is an unsafe and counterproductive work practice. An employee found using, selling, trading or offering for sale illegal drugs, alcohol or inhalants while on duty or while on agency premises will be subject to disciplinary action up to and including termination of employment.
- B. **Conviction:** All employees are required to notify their supervisor or the Executive Director of any conviction involving the use of drugs or alcohol if the violation occurred in the workplace or while the employee was on duty. Notification must be provided within five days after such conviction. Within 30 days of receiving notice of such a conviction, the supervisor or Executive Director shall: (1) take appropriate personnel action, up to and including termination; or (2) require the employee to participate in an approved drug or alcohol abuse rehabilitation program and provide evidence of successful completion if appropriate.
- C. **Visible Impairment:** An employee reporting for work visibly impaired or unable to properly perform required duties will not be allowed to work. If possible, the employee's supervisor should seek the Executive Director's opinion of the employee's status. The supervisor should then confront the employee with the observation and rule out any problems that may have been caused by medication or a physical condition. If it is determined that the employee is impaired, the employee should be sent home or to a medical facility by safe transportation, accompanied by the supervisor or another employee if necessary. An impaired employee shall not be allowed to drive.

- D. **Prescription Drugs:** Prescription drugs prescribed by the employee's physician may be taken during work hours. The employee should notify the supervisor if the use of properly prescribed prescription drugs would affect the employee's work performance. Abuse of prescription drugs will not be tolerated. An employee found abusing prescription drugs will be subject to disciplinary action up to and including termination of employment.
- E. **Assistance:** It is the supervisor's responsibility to confront any subordinate whenever changes in performance suggest a drug or alcohol abuse problem. The supervisor, after consultation with the Executive Director, may require the employee to participate in an approved drug or alcohol abuse rehabilitation program and provide evidence of successful completion if appropriate.

#### 14. SEPARATION FROM EMPLOYMENT

- A. Separation from Agency employment may result from voluntary resignation, retirement, transfer to another state agency, involuntary termination or a reduction-in-force. All separating employees will be required to surrender all agency property, keys, identification documents and parking permit/decal at an exit interview which should occur as near as possible to the close of the last day of work.
- B. The Executive Director shall be primarily responsible for the implementation of this policy. Supervisors must ensure that the Chief Financial Officer is promptly notified of any resignations and must require that the terminating employee return all agency property.

#### 15. CHANGE IN PERSONNEL INFORMATION

Employees are required to inform the Executive Director and Chief Financial Officer of any changes in name, address, marital status or dependent status within 30 days after the event, as these changes could affect many areas such as the withholding of federal income tax, insurance, TexFlex, beneficiary designation, and deferred compensation.

#### 16. VEHICLE AND TRAFFIC SAFETY

- A. In the performance of job tasks and when traveling on official agency business whether in a state vehicle or private vehicle, all employees will observe the following: (1) maintain a current Texas Driver's License; (2) use safety belts while vehicle is in motion; (3) observe all speed limits and reduce to safe driving speed during inclement weather; (4) use good defensive driving techniques.
- B. Employees who drive in connection with official agency business, whether in a state vehicle or private vehicle, may be required to take a driver safety course

approved by the Executive Director, not more often than once every three years. Typically, these driving courses will be arranged by the agency.

**17. WORKPLACE SAFETY**

All employees are expected to be safety-conscious and to report any conditions on the agency's premises that might cause an accident. Unsafe conditions or injuries received while at work, even though slight, are to be reported to the appropriate supervisor.

**18. THREATS**

The danger of a possible fire, bombing, or other violence against the agency is too great to ignore. No threatening call should be taken as a joke or disregarded; all such calls must be treated as real threats to the safety of the agency and its employees. If a threat is received by an employee, it is the employee's responsibility to notify the employee's supervisor or Executive Director immediately.

**19. DRESS CODE**

The Agency expects employees to wear proper dress befitting their employment at the agency. The Executive Director can determine what attire is suitable for the working conditions. Extremes in dress and grooming are not acceptable. Each employee is considered a representative of this agency and must dress in a manner that reflects a professional office. Employees may be sent home without pay for inappropriate attire as decided by the Executive Director.

**20. UNLAWFUL WEAPONS PROHIBITED**

Except where permitted by policy, the possession of a firearm or unlawful weapon by an agency employee on the Agency's premises or during the course and scope of employment is prohibited. Violations of this prohibition are grounds for disciplinary action, up to and including termination.

**21. INCLEMENT WEATHER EMERGENCIES**

It is the Council's policy to continue operations, if possible, despite weather emergencies or inclement weather. In the event of a weather emergency or inclement weather that results in the office being closed, employees will be required to work remotely unless otherwise directed by the Executive Director. For the purpose of determining inclement weather, the Council will follow the inclement weather schedule of the Austin Independent School District (AISD). For example, if AISD is open, so is the agency; if AISD is closed due to weather, so is the agency; if AISD opens late due to weather, the agency will open at the same time. Employees residing outside the AISD may follow their local school

district's inclement weather schedule if it is different from AISD. If the office opens but closes early because of weather, all employees who reported to work will be paid. However, employees scheduled to work in the office who make no effort to call or come to work must take compensatory or vacation time for their absenteeism.

## **22. TARDINESS**

Employees are expected to call when they know they are going to be tardy. The reason for the tardiness will be reviewed by the supervisor/manager. Examples of excused tardiness include, but are not limited to: accident, flat tire, and personal or family medical emergency. If tardiness is determined to be unexcused, the employee may receive a written or verbal warning. It is the employee's responsibility to ensure that proper notification is given. Notification received from another employee, friend, or relative is not considered proper, except under emergency conditions.

## **23. ABSENTEEISM**

- A. Employees are expected to report for work on time and on a regular basis. If an employee is going to be late or absent for any unscheduled reason, the employee must notify his/her supervisor or the Executive Director as far in advance of the regular starting time as possible to explain the reason for the absence and when he/she expects to return to work. If an employee is absent for three consecutive days without notifying the agency, they may be subject to immediate termination. If notice is given and the agency considers the reason unacceptable, the employee will be charged with an unexcused absence.
- B. Unexpected absences should be reported by telephone on the day of the absence. If reporting an unexpected absence prior to 8:00 a.m. on the day of the absence, the employee should leave a message on the employee's supervisor's voice-mail. If reporting an unexpected absence during normal business hours, the employee should speak directly with their supervisor.

## **24. CAPPS ENTRIES AND MONTHLY TIME REPORTS**

Employees must record any leave used (e.g., compensatory time, sick leave, annual leave) and any compensatory time or overtime earned during a given week. Entries must be made in CAPPS no later than Friday of that same week. Supervisors must approve or deny an employee's entry in CAPPS no later than the first working day of the following week. Additionally, employees must follow any time-sheet or accountability requirements mandated by their supervisor.

Employees must run a monthly time report for the previous month on the first working day of each month. Monthly time reports run during the month covered by the report will not be accepted. Reports must be submitted to the employee's supervisor for approval.

**25. BREAKS**

- A. The agency provides two 15-minute breaks each day, one in the morning and one in the afternoon. To ensure adequate coverage at all times, all breaks are coordinated through the department supervisor. Break time may not be added to the lunch period or the beginning/end of the daily work schedule.
- B. Breaks are the time to be used for employee snacks, smoke breaks, personal phone calls, personal errands, accessing the internet, reading magazines, etc. These activities should not be performed at other times. However, if it becomes necessary to attend to some of these activities at other times during the day, then the employee should reduce the break time accordingly.

**26. LUNCH**

One hour is allowed for lunch, with staggered time as approved by the employee's supervisor.

**27. KEEP WORK UP TO DATE**

Any inability to meet the requirements of an employee's position regardless of the reason should be reported to the supervisor and should be addressed by the supervisor. It is the supervisor's responsibility to inform the Executive Director if duties are not being performed or if backlogs in work are accruing and no solution is evident.

**28. CHILDREN AT THE OFFICE**

Children of employees are not allowed at the office except in emergency child care situations. Such a situation should have approval from the supervisor and should not occur in excess of once every six months. The length of stay of the child at the office should not exceed three hours. The employee should take every reasonable action to help prevent the child from disrupting other staff members.

**29. GUESTS OF STAFF**

Guests of staff in the office are not recommended. Any guest should have prior approval from the supervisor and should not remain in the office longer than 15 minutes. The employee should take every reasonable action to help prevent the guest from disrupting other staff members. Guests should remain in the reception area.

### 30. RESOURCE EFFICIENCY

Employees are required to adhere to the agency's Resource Efficiency Plan by: turning off unnecessary lights, appliances, and other equipment when not in use; adjusting blinds to allow for solar heating in winter and cooling in summer; scheduling operations to ensure building systems will not be operated outside normal working hours as much as possible; and adjusting temperature controls to no lower than 70 or higher than 75 degrees.

### 31. ETHICS POLICY AND CODE OF CONDUCT

#### A. Ethics Policy:

- i. All employees of the agency will perform all of their duties in a manner that is honorable and honest. All persons with whom the employee comes in contact as a result of employment with this agency including other employees of the agency will be treated in a kind and courteous manner. Services will be provided in the most simple and straightforward way to allow for the timely completion of necessary actions to obtain the desired results. Employees will be fair and treat all persons and entities with whom they come in contact as a result of their position in an equitable manner. Employees will treat each other in a considerate manner that promotes cooperation.

#### B. Code of Conduct:

- i. All staff are required to be familiar with and acknowledge the following Code of Conduct and comply with the ethics policy adopted by the agency. By acknowledging receipt of this manual, staff are also acknowledging receipt of the following Code of Conduct and agree to abide by the agency's ethics policy.
- ii. In regard to all persons and entities with whom an employee of the agency comes in contact in the course of fulfilling their duties for this agency, all employees will:
  - a. Avoid conflicts of interest. (**For example**, employees should avoid providing services to persons that they are personally acquainted with outside the office if possible.)
  - b. Ensure confidentiality of information. (**For example**, investigators should not discuss pending cases or dismissed complaints with spouses or other office staff, outside of those directly involved in enforcement efforts at the agency.)

- c. Promote fair dealing. (**For example**, managers should not give privileges to some staff and not to others unless special circumstances are involved.)
  - d. Ensure protection and proper use of agency assets. (For example, staff should secure doors and or cabinets of confidential information when not present at the office.)
  - e. Prohibit related party transactions. (For example, a licensing staff person should avoid processing an application for licensure of a relative.)
  - f. Prohibit illegal acts. (For example, employees should not use office consumable supplies for personal activities.)
  - g. Comply with laws, rules, and regulations. (**For example**, employees may not change rules or regulations on their own volition.)
  - h. Maintain Civility. (For example, at no time should one employee yell or raise their voice in an accusatory manner to another employee in the context of the work environment. The one exception would be to warn another employee of the impending threat of physical harm to the employee or any other person in the vicinity. For example, at no time should an employee direct profane language at another staff person in a manner which verbally attacks the other employee.)
- iii. The Code of Conduct is monitored by supervisors for implementation by all staff.
  - iv. Any questions about following the agency's Code of Conduct should first be directed to a supervisor and then to the Executive Director.
  - v. Any relevant interpretations of the agency's Code of Conduct should be maintained in written form by the Executive Director and shared with all employees for further training periodically.

## 32. INDOOR AIR QUALITY

Indoor air quality includes any conditions that impair optimum air quality in offices, including the HVAC system. Complaints should be made to the Executive Director. The Director reviews the complaint and submits concerns to the Department of State Health Services and the Texas Facilities Commission's building property manager for remedial action.

### **III. EMPLOYMENT PRACTICES**

#### **1. WORKFORCE DIVERSITY (EEO PLAN)**

- A. It is the policy of the agency not to discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age, or genetic information, including family medical history. The agency is committed to the principles of Equal Employment Opportunity law. An employee who violates the agency's EEO policy is subject to disciplinary action up to and including termination.
- B. The Executive Director will be responsible for overseeing the EEO policies and procedures and for ensuring compliance with EEO laws. All employment decisions will be based on objective, lawful, job-related, and measurable criteria that can be consistently applied. The Executive Director will review all employment actions and decisions, including recruitment, selection, promotion, assignment, training, evaluations, discipline, restructuring, workplace accommodations, and compensation to ensure consistency of application. The Executive Director will annually review all personnel policies and procedures to ensure compliance with EEO laws and present any recommendations for updating. All employment related documents will be maintained in accordance with the agency's Texas State Record Retention Schedule.
- C. The Agency adheres to its *Workforce Analysis, Recruitment Plan, and Annual Report* regarding posting of positions with entities to help ensure workforce diversity.

#### **2. DISCRIMINATION PROHIBITED**

- A. No agency employee, when acting or purporting to act in his/her official capacity, may refuse to employ or discharge a person because of the person's race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, disability, age, or genetic information, including family medical history.
- B. An employer or employee commits an unlawful employment practice if the employer or employee retaliates or discriminates against a person who (a) opposes a discriminatory practice, (b) makes or files a complaint alleging employment discrimination, (c) or testifies, assists or participates in any manner in an investigation, proceeding or hearing. Any employee who retaliates against another employee who opposes alleged employment discrimination violates the agency's policies and procedures and may be subject to disciplinary action up to and including termination.
- C. Employees are not required to retire at any specific age.

- D. All employees will receive a copy of the agency's policies and procedures and training regarding the prohibitions against employment discrimination within 30 days of employment and every two years thereafter. Employees who complete this training must certify that they have received the training by presenting a certificate with their signature. All employees are required to undergo re-training every 2 years.

### **3. SEXUAL HARASSMENT**

- A. Sexual Harassment is defined by the Equal Employment Opportunity Commission Guidelines as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if: (a) submission to such conduct is an explicit or implicit term or condition of an individual's employment; (b) submission to or rejection of such conduct is used as a basis for employment decisions affecting such individual; or (c) the conduct has the purpose or the effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.
- B. The agency will not tolerate sexual harassment of any employee by another employee, supervisor, or other person with whom an employee may have contact with as part of his or her duties. The Executive Director will be responsible for overseeing the policies and procedures related to sexual harassment and for ensuring compliance with those policies and procedures.
- C. An employer or employee commits an unlawful employment practice if the employer or employee retaliates against a person who (a) opposes the sexual harassment of themselves or another, (b) makes or files a complaint alleging sexual harassment, (c) or testifies, assists, or participates in any manner in an investigation, proceeding or hearing. Any employee who retaliates against another employee for actions covered by this provision violates the agency's policies and procedures and may be subject to disciplinary action up to and including termination.
- D. All employees will receive a copy of the agency's policies and procedures and training regarding the prohibitions against sexual harassment within 30 days of employment and every two years thereafter. Employees who complete this training must certify that they have received the training by presenting a certificate with their signature. All employees are required to undergo re-training every 2 years.

### **4. DISCRIMINATION AND SEXUAL HARASSMENT COMPLAINT PROCEDURES**

- A. Employees who feel they have been discriminated against or sexually harassed are encouraged to follow this complaint procedure, and may do so without fear of retaliation. All agency employees are responsible for immediately reporting discrimination and sexual harassment to the Executive Director or anyone in

management with whom they feel comfortable. Except for the victim of sexual harassment, failure to report such conduct may result in disciplinary action.

- B. Employees may initiate a complaint with any person in management with whom they feel comfortable.
- C. The Executive Director shall be notified immediately of the complaint and must initiate a thorough investigation of the complaint. The investigation must be completed within 14 days unless exigent circumstances require additional time. Written findings and recommendations should be submitted to the Executive Director.
- D. Based on the written findings, the Executive Director will take immediate action if such prohibited conduct occurred. The Executive Director may take necessary and immediate action (e.g., temporary reassignment, requiring an employee to work only from home) during the pendency of any investigation if the circumstances warrant such action.
- E. The Executive Director will monitor the complaint to ensure the situation has been remedied. The Executive Director will maintain a log of all formal complaints and the results of such complaints.
- F. To the extent allowed by law, the Agency will maintain the confidentiality of all information concerning sexual harassment complaints. Records will be kept separate from personnel files and will be accessible only to authorized personnel.
- G. If the employee is dissatisfied with the decision by the Executive Director, the employee may request to be heard by the Council pursuant to Section 551.074 of the Government Code at its next regularly scheduled meeting. A dissatisfied employee may also file a complaint with the Texas Workforce Commission – Civil Rights Division. A complaint involving discrimination must be filed within 180 days after the alleged discriminatory action took place and a complaint involving sexual harassment must be filed within 300 days after the alleged sexual harassment took place.

## **5. REASONABLE ACCOMMODATIONS AND THE ADA.**

- A. The Agency shall make reasonable workplace accommodations for employees with sincerely held religious beliefs, women affected by pregnancy, and any employee having a known physical or mental impairment as defined under the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments of 2008 (ADAA), or state law, that does not constitute an undue hardship to the agency. Job postings will include notification that the agency complies with ADA and ADAA.

- B. The Executive Director will be responsible for overseeing the reasonable workplace accommodation policy and procedures to ensure compliance.
- C. Definitions.
  - i. Disability: Any employee having a known mental or physical impairment that substantially limits at least one or more life activities of that individual; a record of such impairment; or being regarded as having such an impairment.
  - ii. Qualified Individual with a Disability: A qualified individual with a disability is an individual who meets all the skills, experience, knowledge, educational and other job requirements for the position. In addition, the individual can perform the essential functions of the position with or without reasonable accommodation.
  - iii. Reasonable accommodation: Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability, a person with sincerely held religious beliefs, or women affected by pregnancy to perform the essential functions of that position.
  - iv. Undue hardship: An action requiring significant difficulty or expense, when considered in light of the following factors:
    - a. The nature and cost of the accommodation needed under the law;
    - b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
    - c. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
    - d. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

- D. Procedures for requesting a reasonable workplace accommodation.
- i. Any employee requiring an accommodation shall notify the immediate supervisor as soon as practical, informing the supervisor of the nature of the disability (unless obvious), the fact they are pregnant, or that they have sincerely held religious beliefs requiring accommodation.
  - ii. Any supervisor notified of a need for accommodation shall immediately report the same in writing to the Executive Director, with a copy to the employee. The confidential interoffice memorandum shall state the name of the employee, the reason for the requested accommodation and the date reported. Unless the disability is obvious, the employee shall thereafter provide a medical statement to the Executive Director within a reasonable time from the date of notification. The medical statement is needed to complete the accommodation process and shall contain a diagnosis, prognosis, and an evaluation as to the effect the impairment will have on the employee's ability to perform the essential duties associated with the employee's position. The medical statement should also include what major life activity is substantially limited as a result of the disability.
  - iii. The Executive Director will analyze the request and confer with the employee to ascertain the employee's requirements and input on a reasonable accommodation. If the conference is conducted by a designee, then the designee will prepare a written report to be submitted to the Executive Director no later than the 10<sup>th</sup> working day following the conference.
  - iv. Based on the relevant information provided, the Executive Director shall determine what, if any, reasonable accommodation will be made and shall convey it in writing to the employee.
  - vi. Reasonable workplace accommodations may include making existing facilities readily available; modifications or adjustments to the work environment or manner or circumstances under which the position is customarily performed; modifications or adjustment that enable the individual to enjoy equal benefits and privileges as other similarly situated employees without disabilities/need for accommodation; and other appropriate adjustment to the work environment of a qualified individual needing accommodation. Reasonable accommodation will be given unless the Agency can demonstrate that doing so would cause an undue hardship for the agency.
  - v. If the accommodation would constitute an undue hardship, supporting documentation will state the reasons.

- E. The Agency will maintain the confidentiality of all medical and ADA information concerning employees. Records will be kept separate from personnel files and will be accessible only to authorized personnel.
- F. If a reasonable workplace accommodation is implemented, the Executive Director shall periodically confer with the employee with the disability to determine continuation or discontinuation of the workplace accommodation.

## **6. ADA and ADAA GRIEVANCE PROCEDURE**

- A. The Agency has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any violation of Title II of the Americans with Disabilities Act and the ADAA and appropriate regulations. Title II states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination” in programs or activities sponsored by a public entity.
- B. Complaints should be addressed to the Executive Director for the agency, who has been designated to coordinate the ADA compliance efforts.
  - i. Complaints must be filed with the Executive Director, unless they involve the Executive Director, in which case the complaint should be filed with the presiding member of the Council. Complaints must be in writing, and must contain the name, address, email address, and telephone number of the person filing the complaint. Complaints must also describe the alleged violation in reasonable detail.
  - ii. A complaint must be filed within thirty (30) days after the complainant becomes aware of the alleged violation.
  - iii. Where appropriate, an investigation shall follow a timely filed complaint. The investigation shall be conducted by the Executive Director, or by an attorney assigned to the Council from the Attorney General’s Office if the complaint is against the Executive Director. These rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.
  - iv. A written determination as to the validity of the complaint and a description of the resolution shall be issued by the Executive Director or the presiding member of the Council if the complaint is against the Executive Director. A copy of the determination shall be forwarded to the complainant no later than thirty (30) days after its completion.

- v. The ADA coordinator shall maintain the files and records of the Agency relating to the complaints filed.
- vi. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration shall be made within thirty (30) days to the Executive Director.
- vii. The right of a person to a prompt and equitable resolution of the complaint filed under this policy shall not be impaired by the person's pursuit of other remedies, such as the filing of an ADA complaint with the responsible federal department or agency.
- viii. To the extent allowed by law, the agency will maintain the confidentiality of all information concerning ADA grievances. Records will be kept separate from personnel files and will be accessible only to authorized personnel.

## **7. EMPLOYEE TRAINING**

- A. In accordance with the State Employee Training Act, Government Code, Chapter 656, and the Agency's *Policy on Staff Training and Education*, the Agency promotes and encourages employee training for current and prospective duty assignments within available agency funds. This includes in-service training, quality management concepts, workshops, seminars, training sessions, videos, tapes, internships, computer learning center and any special programs presented by the State. All employees are eligible to apply to attend training. Approval of the Executive Director is required prior to registering for or attending training. Reimbursement may be made to an employee for fees, registration, travel and lodging expenses, training materials, costs and other necessary expenses.
- B. Employee supervisors are encouraged to assess the training needs of each staff person on an ongoing basis. Staff development should be included as part of the employee's evaluation when possible. Upon return to the workplace the employee shall maintain documentation that shows attendance to the training for at least two years.
- C. State compensatory time for training is earned only if an employee is required by the agency to attend training outside their regular or adjusted work hours.
- D. Training for employees at institutions of higher education has further restrictions. Training is only available to employees after six months of employment. This training must be approved on a course-by-course basis for each employee in advance by the Executive Director. No employee will be approved for more than one course at any one time. The courses should be taken outside the employee's normal office hours. Approval for the course should be based on the added job-

related knowledge and/or skill that the employee should acquire by taking the course. Approval will also be limited by an agency set cap of \$2,400 per fiscal year for staff attending higher education courses and by allowing different staff to take advantage of this option for training.

- E. An employee approved to take a course may seek reimbursement for qualified expenses in an amount not to exceed three hundred dollars (\$300) per semester. For reimbursement, the employee must submit a description of the course; the location, time, and cost; and justification of the relevance of the training to the current job assignment. Within 30 days after completion of the course, the employee must provide proof of completion of the approved course to the Executive Director. Fees for allowable reimbursement are: tuition, student service fees, building use fees, lab fees, books and workbooks. Expenses that are not reimbursable include late fees, parking fees, other supplies, and travel.

## **8. EMPLOYMENT OF ALIENS**

The Immigration Reform and Control Act of 1986 (IRCA) prohibits the Agency from knowingly hiring an alien not authorized to work in the United States. The Agency must verify the identity and eligibility for employment of, and complete Form I-9 for all persons hired. See Tex. Gov't Code Ann. §673.002. Verification is not required of applicants, only those hired. There is no requirement to verify the identity or employment eligibility of employees hired before and continuously employed since November 7, 1986, because they were "grandfathered" by IRCA.

## **9. PUBLIC EMPLOYEE LABOR UNIONS**

- A. State officials cannot enter into collective bargaining contracts with labor organizations in regard to wages, hours, or conditions of employment. State officials are not allowed to recognize particular labor organizations as the bargaining agents for public employee groups. The Attorney General ruled public employers should meet with their employees or their designated representatives at reasonable times and places to hear grievances concerning wages, hours, and conditions of work.
- B. The anti-strike provisions for employees of the State of Texas are stringent. A striking employee forfeits all "civil service rights, re-employment rights and any other rights, benefits, or privileges which he/she enjoys as a result of his/her employment or prior employment."

## **10. PUBLIC INFORMATION**

- A. The public is entitled, with some exception, to full and complete information regarding the affairs of government. The result of the Texas Public Information Act is that most information held in a public agency is public by definition.

- B. The following three areas are the main sections under which information may be withheld:
- i. information deemed confidential by law, either constitutional, statutory or by judicial decision;
  - ii. information in personnel files, the disclosure of which would be a clearly unwarranted invasion of privacy including home addresses and telephone numbers of state employees. (Employees have the option of prohibiting access to their home address, telephone number, social security number and information revealing identity of family members); and
  - iii. interagency and intra-agency memoranda or letters and internal working papers.
- C. Information contained in personnel files is almost exclusively public information unless it is covered by another exception, e.g., office memoranda. All information in an employee's individual personnel file is available to each employee or his/her designated representative. Information cannot be expunged or removed from employee records. Personal notes of individual employees in their sole possession and made solely for their own use are not public records.
- D. Public employees must make available, upon request, the following types of information, which are specifically mentioned in the Public Information Act:
- i. records, audits and evaluations made of, by, or for, governmental bodies upon their completion;
  - ii. the names, sex, ethnicity, salaries, title and dates of employment of all employees and officers of governmental bodies;
  - iii. all working papers, research material and information concerning any public funds upon completion of a project;
  - iv. description of the agency's central and field organization;
  - v. rules of procedure for the agency;
  - vi. statements of policy adopted by the agency; and
  - vii. administrative staff manuals and instructions to the staff affecting a member of the public.
- E. The Texas Public Information Act should only be viewed as a guide to the kinds of information that can be made available to the public. The Attorney General has

made a number of rulings under a separate category of opinions called Open Records Decisions. By no means complete or exhaustive, he has ordered the following material released: (a) the terms of a settlement of an equal employment claim; (b) the amount of unemployment compensation benefits paid to an individual; (c) an employee's letter of resignation; (d) the names of employees who took sick leave and the dates the sick leave was taken; (e) a hearing officer's report concerning a state employee's termination; (f) letter of complaint written to an employee's supervisor about him/her (released to the employee involved); (g) an employee's educational background and work experience; and (h) employee's date of birth.

- F. Information may be withheld at any time if it relates to litigation of a criminal or civil nature or to settlement negotiations. Information may be withheld if a case is still pending or if there is a reasonable likelihood that a suit will be filed. Such a decision must be made by the attorney for the agency or by the Attorney General.

## **11. REQUESTS FOR EMPLOYEE INFORMATION**

- A. All requests for information on current or former employees will be directed to the Executive Director and will be handled in accordance with the Texas Public Information Act. Upon receiving a written request for information, the Executive Director will determine what type of information is needed and handle the request accordingly in a professional manner. Legal Counsel will be responsible for giving guidance to the Executive Director on any legal problems or questions that arise.
- B. Complete personnel files of all active employees are maintained in the office. In response to a request for probability of continued employment, the Executive Director will respond that the Agency is an "at will employer."
- C. Verifications of employment for current, retired or terminated employees will include the following: dates of employment, titles or positions, work location, and verification of salary. The Executive Director will verify the employee's wish to make public the employee's home address, telephone number, social security number and information revealing the identity of family members. If the employee has indicated in writing that the information should not be made public, the request for information will be denied.
- D. For all former employees, an "Ex-employee File," containing the employee's name, social security number, date of hire, date of termination and last known address, will be maintained within the office. Complete personnel files for all separated employees are maintained in accordance with the agency's Records Retention Schedule. The Agency will not provide employee recommendations verbally or in writing.

## **12. CONFLICT OF INTEREST**

- A. Trade associations: An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be an agency employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule A or the beginning amount in Group B9 of salary schedule B. In addition, a person who is the spouse of an officer, manager, or paid consultant of a trade association representative may not be an employee as described above.
  
- B. Generally, employees of the Agency may not have any personal interests or engage in any business of professional activity which conflicts with the public interest. Specific prohibitions include:
  - i. Accepting or soliciting any gift, favor or service that might reasonably tend to influence the employee's discharging of official duties or that the employee knows or should know is being offered with the intent to influence an employee's official conduct.
  
  - ii. Accepting other employment or engaging in any business or professional activity in which the employee might reasonably expect would require or induce the employee to disclose confidential information acquired by reason of his/her position.
  
  - iii. Accepting other employment or compensation that could reasonably be expected to impair the employee's independence or judgment in the performance of the employee's official duties.
  
  - iv. making personal investments that could reasonably be expected to create a substantial conflict between the employee's private interest and the public interest; or
  
  - v. intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for having exercised the employee's official powers or performing the employee's official duties in favor of another.

## **13. MULTIPLE EMPLOYMENT WITH THE STATE**

All state employees are to be informed of their obligation and responsibility to inform both initial and second employers of their intent to accept an additional employment with the state. Employees who are legally employed by more than one Texas agency or institution of higher education are subject to the following provisions and are to be informed of these provisions prior to being placed in such dual employment status:

- A. The employee must keep completely separate leave records for each employment
- B. Time worked in one position may not be used as additional tenure credit for purposes of longevity or annual leave accrual for other positions.
- C. Upon termination of one employment, the leave balances accrued under that employment may not be transferred to the remaining employment.
- D. The state contribution towards the employee's portion of social security tax liability will be subject to the overall limit specified elsewhere in Article IX. The Comptroller shall prescribe such uniform accounting and reporting procedures as necessary to ensure that expenditures for this purpose do not exceed this limit.
- E. The total state contribution towards the employee's group insurance will be limited to no more than the amount specified elsewhere in the Appropriations Act for full-time active employees.
- F. The employee will be entitled to receive longevity payment for no more than one employment.
- G. Overtime compensation will accrue to each employment totally independent of the other except that when an employee works in a dual employment capacity where the employee is subject to the overtime provisions of the FLSA. In cases where the dual employment is with two separate agencies, the two agencies shall coordinate in order to determine which agency shall have the responsibility to assure that the employee is properly compensated in accordance with such provisions.

#### **14. FRAUD PREVENTON AND DETECTION**

The potential for, or occurrence of, fraud and other illegal acts is a significant and sensitive management concern in any organization. This policy is intended to formalize fraud prevention and detection and assigns responsibility of coordinating all efforts of compliance with this policy to the Executive Director or his or her designee.

The purpose of this policy is: to minimize the impact of all potential or actual fraudulent or illegal acts at the Agency by deterring such activity or detecting it as early as possible; to alert all employees that there is a mechanism by which such activities can be reported and investigated; and to ensure the fair, objective and thorough investigation and reporting of all such activities while safeguarding individual rights and maintaining confidentiality in accordance with applicable law. All documents related to an investigation will be treated as audit work papers to the extent allowed by law.

This policy relates to all known, alleged, or suspected fraud and other illegal activities: (1) within the Agency involving its employees in the conduct of their employment responsibilities, which includes, but is not limited to theft, malfeasance, abuse of power or authority, kickbacks and embezzlement; (2) that involve the loss, misappropriation or theft

of any assets belonging to the Agency or for which it is responsible, including, but not limited to cash, checks, property and equipment, information and other data.

This policy does not relate to such activities involving any individual, group, organization, government or other entity, which is not a part of the Agency, unless such activity may have involved an employee of the Agency in the conduct of his or her employment responsibilities, or unless such activity involved the loss, embezzlement, misappropriation or theft of any assets belonging to the Agency.

Duty to Prevent and Report Fraud:

- A. Employees must conscientiously prevent and avoid any type of fraud at the agency. Employees must also report any actual or suspected fraud.
- B. Employees must maintain accurate records of agency business activities, processing of cash, and payments to vendors and any other information that pertains to their positions.
- C. Employees must cooperate with Agency investigations regarding fraud. Failure to cooperate may result in disciplinary action against the employee, including termination.

Reporting of Suspected Fraud:

- D. Any employee who suspects or detects fraud should report the allegation to the Executive Director.
- E. An employee who suspects or detects fraud on the part of the Executive Director should report the allegation to the presiding member of the Council who may then perform the role of the Executive Director. The presiding member may delegate the responsibility to investigate the alleged fraud to the General Counsel but shall retain authority over and responsibility for the investigation.
- F. Anonymous reports of fraud may be submitted, but may prove difficult or impossible to investigate or resolve.
- G. Suspected or actual fraud may also be reported to the State Auditor's Office at 1-800-892-8348, or via the SAO's website at [www.sao.texas.gov](http://www.sao.texas.gov).

Rights of Employees Suspected of Fraud:

- H. An employee who is suspected of fraud has the right to explain his or her side of the incident or situation in a disciplinary interview held by the Executive Director and the employee's supervisor. The Executive Director may include other employees in this interview if warranted.

- I. The investigation will also include an interview with the employee who makes the allegation. The Executive Director shall conduct interviews with other employees who have relevant knowledge of the matter, as well as with pertinent vendors or customers.

Rights of Third Parties:

- J. Any third-party who notifies the Executive Director in writing of possible fraud on the part of an employee, will be provided a response from the Executive Director regarding the results of the investigation.
- K. Third-parties may be asked to provide supporting information.

Resolution of Fraud Allegations:

- L. Depending on the nature of the suspected fraud, the Executive Director shall investigate the allegation, document the investigation, and resolve the matters as expeditiously as possible. The investigation file shall be maintained by the Executive Director and kept confidential to the extent permitted by law.
- M. The Executive Director has the authority to refer incidents to law enforcement.
- N. Determinations of fraud may only be made by the Executive Director based on a preponderance of the evidence. The Executive Director may take disciplinary action against an employee or terminate an employee depending on the severity of the fraud that occurred. In situations where fraud is strongly suspected but which cannot be proved or in situations which the incident is minor, the Executive Director may issue a warning letter to the employee.
- O. A malicious report of fraud is a form of fraud itself and will be dealt with accordingly.
- P. The results of the investigation shall be provided to the person who made the allegations in writing. However, the details of the investigation are confidential and shall not be made available to the person making the allegation.
- Q. An investigatory finding of fraud on the part of the Executive Director should be presented to and reviewed by the Council in closed session. The Council has exclusive authority to make a final determination regarding the commitment of fraud by the Executive Director. If the Council determines that the Executive Director committed fraud, it may take appropriate disciplinary action against the Executive Director, including termination.

## **IV. VACATION, LEAVE AND HOLIDAYS**

### **1. HOLIDAYS**

- A. Legal Holidays of which state offices may be closed are set by the state legislature each biennium. The legislature has certain designated state holidays of which employees can work and receive straight compensatory time for every hour worked. See Section 662.003 of the Government Code for a list of these state holidays. However, each agency must have on hand enough personnel to carry on the activities of the agency (a “skeleton crew”) so that the public business can be carried on during that designated state holiday. See Section 662.004 of the Government Code. These elective holidays are commonly referred to as “Skeleton Crew Days.” Employees desiring to take off on a skeleton crew day must submit a request for leave to their supervisor and obtain approval prior to taking the elective state holiday.
- B. Employees are also entitled to observe Rosh Hashanah, Yom Kippur, and Good Friday, in lieu of any state holiday or holidays on which the agency is required to be open and staffed to conduct the public business. Employees electing to take leave to observe any of these holidays must submit a request for leave to their supervisor and obtain approval prior to the requested leave date.

### **2. REQUESTS FOR LEAVE**

- A. Employees requesting leave (i.e., time-off) must submit their requests by email to their supervisor (or other appropriate person) at the individual’s agency email address. The email must contain a subject line indicating the nature of the request and the body of the email must include the date(s) of leave requested, the type of leave to be used (e.g., annual leave), and the number of hours of leave to be used. Emails containing leave requests should not be commingled with other subjects or requests. For timekeeping purposes, all leave is to be rounded off in 15-minute increments.
- B. Although employees are required to give reasonable notice in advance of taking leave, employees are not required to specify the reason for which leave is being taken.
- C. Supervisors must approve or deny, either in whole or in part, requests for leave by replying to the employee’s email. If a supervisor (or other appropriate person) fails to approve a request for leave within 10 days, the request is deemed denied.

### 3. VACATION-ANNUAL LEAVE

- A. Employees are entitled to a paid vacation as determined by length of service. The schedule of vacation allowances is as follows:

<u>Length of State Service</u>	<u>Hours Accrued Per Month</u>	<u>Allowable Carry Over</u>
0 but less than 2 years	8	180
2 but less than 5 years	9	244
5 but less than 10 years	10	268
10 but less than 15 years	11	292
15 but less than 20 years	13	340
20 but less than 25 years	15	388
25 but less than 30 years	17	436
30 but less than 35 years	19	484
35 but less than 40 years	21	532

- B. Credit for one month's accrual is given for each month or fraction of a month of employment with the state and is posted on the first day of employment and on the first day of each succeeding month thereafter. Vacation entitlement accrues from the first day of employment and terminates on the last day of duty. If permitted, an employee may remain on an agency payroll while expending his/her accrued vacation. Vacation with pay may not be granted until the employee has been continuously or uninterruptedly employed with the state for six (6) months.
- C. When an employee resigns, is dismissed, or otherwise separates from state employment, he/she is entitled to be paid for accrued and unused vacation time, as long as the employee has had continuous employment for at least six months. An employee may be paid in a lump sum, after thirty (30) days off payroll, or may, if permitted, remain on the payroll while expending the accrued but unused vacation time. An employee who is separated before completing six months of continuous employment is not entitled to payment for accrued vacation time. Part-time employees will accrue vacation leave on a proportionate basis and the maximum carryover will also be proportionate.
- D. Employees requesting annual leave must submit their request for leave to their supervisor for approval a minimum of two (2) weeks prior to the first day of leave requested. Approval will be based upon employee workload, office coverage, and the number of consecutive days requested.

### 4. SICK LEAVE

- A. An employee accrues sick leave at a rate of eight hours per month of full time employment. Sick leave accumulates with the unused amount carried forward each month and there is no limit on the amount which may be accrued. Sick leave

includes sickness, injury, pregnancy, or confinement that prevents the employee from performing his/her duty. It is also applicable when a member of an employee's immediate family is actually ill. Immediate family is defined as those individuals related by kinship, adoption, marriage or foster children who are living in the same household as the employee. Minor children of the employee, whether or not living in the same household, will be considered immediate family for purposes of regular sick leave. An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a child, spouse or parent of the employee that needs such care and assistance as a direct result of a documented medical condition.

- B. An employee absent because of illness or injury must notify the agency the first morning of their absence within the first thirty minutes of their scheduled work time, or at the earliest practical time. If reporting an unexpected absence prior to 8:00 a.m. on the day of the absence, the employee should leave a message on the employee's supervisor's voicemail or send a text or email. If reporting an unexpected absence during normal business hours, the employee should speak directly with the employee's supervisor.
- C. Unless the employee is too ill or injured to call, text, or email their supervisor, the employee is expected to contact the supervisor and not delegate the responsibility to a third-party. If unable to call, text, or email due to illness or injury, an employee must email an explanation and request to excuse the absence to the employee's supervisor after returning to work.
- D. To be eligible to use accumulated sick leave for a continuous period of more than 3 days, an employee may be required to submit a doctor's certification or an acceptable written statement of facts concerning the illness. Employees must submit an explanation of all absences due to illness or injury exceeding 3 days and may be required to submit an explanation for any absence of 3 days or less.
- E. Employees, upon retirement, will receive credit for their unused sick leave. Sick leave is creditable in the retirement system at the rate of one month of service for each 20 days or 160 hours of accumulated sick leave.
- F. An employee may donate any amount of the employee's accrued sick leave to another employee in accordance with Section 661.207, Government Code.

## **5. EXTENDED SICK LEAVE**

Exceptions to the amount of sick leave an employee may take can be authorized by the Executive Director after a review of the merits of each individual case is completed.

## 6. SICK LEAVE POOL

- A. The Agency's sick leave pool for employees is in adherence to the Texas Government Code.
- B. Contributions to the sick leave pool must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance. The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illness or injury that forces them to exhaust all sick leave.
- C. A retiring employee may designate accrued sick leave for retirement credit in increments of 20 days or 160 hours for one month's credit as well as the number of hours to be donated to the sick leave pool.
- D. An employee may draw from the sick leave pool only with the approval of the pool administrator. Supporting documentation from a medical practitioner must be submitted to the pool administrator containing sufficient information to allow the pool administrator to evaluate the employee's eligibility.
- E. An employee may not receive sick leave in excess of one-third of the total time in the pool or 90 days, whichever is less.
- F. The following terms have been defined by the Employees Retirement system of Texas to mean:
  - i. "Catastrophic injury or illness" means a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose sick leave compensation from the State for the employee.
  - ii. "Licensed practitioner" means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his/her license.
  - iii. "Immediate family" is defined as those individuals related by kinship, adoption, marriage, or foster children who are so certified by the Department of Human Services [now the Health and Human Services Commission] who are living in the same household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.
- G. The Executive Director will serve as the Pool Administrator and is responsible for developing mechanisms to transfer accrued sick leave into and out of the pool;

developing rules and procedures for the operation of the pool; and developing forms for contributing leave to, or using leave from, the pool.

H. The Executive Director may contribute leave to the pool. If the Executive Director requests to use sick leave from the pool, the request must be approved by the presiding officer of the Council who in this instance will serve as the Pool Administrator.

I. General Provisions:

- i. All employees of the agency may apply to use sick leave from the sick leave pool.
- ii. Employees may use pool leave for their own catastrophic illness or injury or for one in their immediate family, as defined above.
- iii. Employees may also use sick leave pool if they contributed sick leave to the pool and then exhausted their sick leave balance in the same fiscal year. Such employees may receive only the number of hours they contributed to the pool that fiscal year unless they suffer a catastrophic illness or injury.
- iv. Employees must exhaust all accrued sick leave before they are eligible to use leave from the pool.
- v. Employees on sick leave pool for an entire month continue to accrue leave provided they return to work following the leave.
- vi. Employees with catastrophic illnesses or injuries are not required to contribute to the pool before they can use pool leave.
- vii. Employees who use pool leave are not required to pay back pool leave.

J. Contributing Sick Leave to the Pool:

- i. Contributions to the pool are strictly voluntary.
- ii. Active employees may contribute one or more days of sick leave to the pool each fiscal year, in increments of eight hours. Employees may contribute to the sick leave pool each month by indicating so at the bottom of their time sheets.
- iii. Employees who make contributions to the pool may not stipulate that their contribution can be used only by a particular person.
- iv. Employees will be encouraged to contribute to the pool at the time of their separation from state employment.

- v. Employees who contribute leave to the pool cannot get it back unless they are eligible to use it.

K. Requesting to Use Leave from the Pool:

- i. Requests for pool leave are to be made in writing by the employee and submitted to the Executive Director, along with medical documentation, through appropriate supervisory channels, and will be considered by the Executive Director on a first come, first served basis.
- ii. The Executive Director will have five working days from the date he/she receives a request in which to approve all or part of the request, or deny the request.
- iii. The amount of pool leave granted for each catastrophic illness or injury will be determined by the Executive Director. The amount cannot exceed one-third of the balance of hours in the pool, or 90 days, whichever is less.
- iv. Any unused balance of pool leave granted to an employee returns to the pool. The estate of a deceased employee is not entitled to payment for unused pool leave.

**7. FAMILY LEAVE POOL**

- A. The Agency's family leave pool for employees is in adherence to Chapter 661 of the Government Code.
- B. Contributions to the family leave pool are strictly voluntary and must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance. The family leave pool is intended to provide eligible employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and to care for themselves or family members suffering from serious illness, including pandemic-related illnesses or complications caused by a pandemic.
- C. A retiring employee may donate accrued sick or vacation leave to the family leave pool upon retirement. A retiring employee may designate the number of accrued sick or vacation leave hours to be used for retirement credit and the number of hours to be donated on retirement to the family leave pool. Retirement credit will be calculated in accordance with Chapter 813 of the Government Code.
- D. Contributions to the family leave pool are taxable to the donor, cannot be retracted, and may not carry a stipulation that the leave donated can be used only by a particular person.

- E. All employees of the agency may apply to use family leave from the family leave pool, but an employee is only eligible to use time from the family leave pool if the employee has exhausted the employee's accrued leave (e.g., compensatory, discretionary, sick, and vacation leave) because of:
- i. the birth of a child;
  - ii. the placement of a foster child or adoption of a child under 18 years of age;
  - iii. the placement of any person 18 years of age or older requiring guardianship;
  - iv. a serious illness to an immediate family member or the employee, including pandemic-related illnesses;
  - v. an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
  - vi. a previous donation of time to the pool.
- F. An employee who requests time from the family leave pool to care for another person must submit and be listed on the other person's birth certificate, birth facts, or adoption or foster paperwork for a child under 18 years of age, including being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent, or provide documentation that the employee is the guardian of a person who is 18 years of age or older and requiring guardianship.
- G. An eligible employee may draw from the family leave pool only with the approval of the Executive Director, who serves as the Pool Administrator.
- i. If the employee is seeking permission to withdraw time because of a serious illness, including a pandemic-related illness, of an immediate family member or the employee and does not qualify for or has exhausted time available in the sick leave pool, the employee must provide the Pool Administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member.
  - ii. If the employee is seeking permission to withdraw time because of an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member, the employee must provide the Pool Administrator with any applicable documentation, including an essential caregiver designation, proof of closure of a school or daycare, or other appropriate documentation.
- H. Requests for pool leave are to be made in writing by the employee and submitted to the Executive Director through appropriate supervisory channels, and will be

considered by the Executive Director on a first come, first served basis. The Executive Director will have five working days from the date he or she receives a request in which to approve all or part of the request, or deny the request.

- I. If the Executive Director determines the employee is eligible, the Executive Director shall approve the transfer of time from the pool to the employee and credit the time to the employee. The amount of pool leave granted will be determined by the Executive Director, but an employee may not receive family leave in excess of one-third of the total time in the pool or 90 days, whichever is less. Any unused balance of pool leave granted to an employee returns to the pool.
- J. The Executive Director is responsible for developing mechanisms to transfer accrued sick and vacation leave into and out of the pool; developing procedures for the operation of the pool; and developing forms for contributing leave to, or using leave from, the pool.
- K. The Executive Director may contribute leave to the pool. If the Executive Director requests to use family leave from the pool, the request must be approved by the presiding member of the Council who in this instance will serve as the Pool Administrator.
- L. Employees who use pool leave are not required to pay back pool leave.

## **8. LEAVE WITHOUT PAY**

- A. The Executive Director may grant leave without pay under the following conditions:
  - i. The request for leave without pay must be in writing.
  - ii. All accrued leave (other than sick leave), in cases other than illness, must be exhausted except when requesting parental leave.
  - iii. In the case of an extended illness, a written statement from the attending physician must be submitted.
  - iv. The following factors will be taken into consideration prior to approval of the leave request: the workload in the agency; the effect of the employee's extended absence; and the situation.
- B. Although approval of leave without pay constitutes a guarantee of employment for a specified period of time, such a guarantee is subject to fiscal constraints. The Executive Director may grant exceptions to the above limitations for such reasons as interagency agreements or educational purposes. Any full calendar month of leave without pay will not constitute a break in the continuity of state employment,

but shall not be included in the calculations of the six month continuous service under merit salary provisions and under the employee vacation and leave provisions.

- C. To request leave without pay, the employee must submit a "Request and Authorization for Leave/Absence" to the appropriate person one month prior to the initial expected leave date. The Executive Director will approve or deny the request and inform the employee of the decision in writing or verbally, if possible. If the leave is granted, the Executive Director will inform the Chief Financial Officer in writing of the duration of leave. Sick and annual leave do not accrue during leaves without pay.

## **9. EMERGENCY LEAVE WITH PAY**

- A. The Executive Director shall grant emergency leave with pay because of a death in the employee's family. Under this provision, an employee's family is defined as employee's spouse, employee's or spouse's parents, children (including foster and adopted children), brothers, sisters, grandparents, and grandchildren. The duration of the employee's leave shall be determined based on the individual situation. The usual time allowed is one day. The maximum allowance is three days. If the employee requires more time than is allowed, he/she may use annual leave time provided prior approval is obtained.

The Executive Director may also grant emergency leave for other reasons if:

1. the employee requests leave;
2. the Executive Director determines that the employee has shown good cause for taking the leave; and
3. the Executive Director believes in good faith that the employee intends to return to work upon expiration of the emergency leave.

- B. For emergency leave with pay, the employee must submit a "Request and Authorization for Leave/Absence" to the appropriate person as soon as possible. The Executive Director will approve or deny the leave at that time.

## **10. DOCKED PAY**

- A. An employee who indicates on a time sheet that leave time is being used when leave time is not available will have his or her pay docked for that time period. Employees should keep their own records of available leave time. Employees in requesting time off in advance are indicating to their supervisor that they have the time available.
- B. Three months of continuous docked pay makes the employee ineligible for a merit salary increase at the next annual evaluation.

## **11. COBRA**

- A. The Consolidated Omnibus Budget Reconciliation Act, known as "COBRA," requires governmental employers to offer continuing health insurance coverage for certain "qualified beneficiaries" who would otherwise lose coverage under the plan upon the occurrence of a "qualifying event". A qualified beneficiary has a right under the law to continue health care coverage under the Texas Employees Uniform Group Insurance Program (UGIP) if the qualified beneficiary would otherwise lose coverage as a result of a "qualifying event".
- B. Qualifying events are: (1) the death of the employee, (2) the voluntary or involuntary termination of the employee's employment (other than for gross misconduct); (3) the divorce of the employee from the employee's spouse; and (4) a dependent child ceasing to be a dependent child under the generally applicable requirements of the plan (i.e., marrying or attaining the age of 25).
- C. COBRA coverage is for health insurance only. It does not include life, accidental death and dismemberment or disability insurance coverage. All employees are notified of their COBRA rights upon employment and upon termination.

## **12. LEAVE OF ABSENCE WITH PAY**

- A. A leave of absence with full pay shall be provided any state employee who is called to active duty with the National Guard by the Governor of Texas because of an emergency in accordance with Section 431.005 of the Government Code. Employees shall be entitled to leave of absence from their respective duties without loss of time, efficiency rating, vacation time, or salary on all days during which the employee is engaged in authorized training or duty ordered by the proper authority. This leave cannot exceed 15 days in any one federal fiscal year.
- B. An employee called to active military duty during a national emergency by a reserve branch of the United States Armed Forces shall have a leave of absence. The employee shall not lose the ability to accrue state service credit while on active duty but shall not accrue vacation or sick leave. However, the employee shall retain any accrued vacation or sick leave and shall be credited with such balances upon return.
- C. State employees who are volunteer firemen shall also be granted a leave of absence with full pay to attend training schools conducted by state agencies provided such leave does not exceed five working days in any one fiscal year.
- D. A state employee, who is a foster parent to a child under the conservatorship of the Department of Protective and Regulatory Services (DPRS), is entitled to a leave of absence with full pay for the purpose of attending staffing meetings held by the

DPRS regarding the child under the foster care of the employee, or to attend the Admission, Review and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee.

- E. A state employee shall be given sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.

**13. PARENT/TEACHER CONFERENCE LEAVE**

- A. A parent in this policy is defined as anyone who has legal custody of a minor child attending school from pre-kindergarten to Senior High School. This leave must be approved up to three days prior to the requested time by submitting a leave request to their respective supervisor.
- B. Current law allows an employee who is a parent of a child who is a student in pre-kindergarten through the 12<sup>th</sup> grade to use up to eight hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's children.

**14. PARENTAL LEAVE**

Employees ineligible for FMLA leave are entitled to parental leave, not to exceed 12 weeks, if the employee uses all available paid vacation and sick leave while taking the parental leave. Such parental leave may only be taken for the birth of a child or the adoption or foster care placement with the employee of a child under three years of age. The leave period begins with the date of birth or the adoption or foster care placement of a child.

**15. PAID PARENTAL LEAVE**

Employees eligible for FMLA leave are entitled to paid parental leave for the birth of a child, birth of a child by the employee's spouse or gestational surrogate, or the adoption of a child. Employees are eligible for 20 days of paid parental leave, except an employee who gives birth to a child is eligible for 40 days of paid parental leave. Paid parental leave is part of FMLA leave and not in addition to FMLA leave, however, employees are not required to use all available vacation and sick leave prior to using paid parental leave.

**16. PAID LEAVE FOR ORGAN, BONE MARROW AND BLOOD DONATIONS**

Approval for paid leave for organ, bone marrow and blood donations must be obtained in advance from the supervisor. Employees will be given leave with pay for donations of organs, bone marrow and blood. For organ donations, employees are entitled to up to thirty (30) days paid leave. For bone marrow donations, employees are entitled to up to three (3) hours per donation, not to exceed four donations per fiscal year. For blood donations, employees are entitled to up to two (2) hours per donation, not to exceed four donations

per fiscal year. Additionally, for blood donations, employees are required to attach a copy of the certificate of blood donation to their time sheet for that week.

## **17. FAMILY AND MEDICAL LEAVE (FMLA)**

- A. State employees who have a total of at least 12 months of State service, and who have worked at least 1,250 hours during the 12 month period immediately preceding the commencement of leave are entitled to leave pursuant to the Federal Family and Medical Leave Act provided that the employee utilize all available applicable paid leave while taking leave pursuant to this provision.
- B. FMLA provides that all eligible employees are entitled to a total of 12 weeks leave during any 12-month period for one or more of the following:
  - i. the birth of a child and to care for the newborn child;
  - ii. placement with the employee of a child for adoption or foster care;
  - iii. to care for the employee's spouse, child or parent with a serious health condition; or
  - iv. a serious health condition that makes the employee unable to perform the functions of the employee's job.
- C. For purpose of the 12-month period discussed above, the Agency uses the rolling 12-month period measured backward from the date an employee uses FMLA.
- D. Other FMLA provisions are as follows:
  - i. An employee who takes leave under the law must be returned to the same job or a job with equivalent status and pay.
  - ii. The employer must continue the employee's health benefits during the leave period at the same level and conditions as if the employee had continued to work.
  - iii. The employer can require an employee to provide a doctor's certification of the serious health condition.
  - iv. The employer may require the employee to use accumulated but unused sick leave or vacation before taking unpaid leave.
  - v. The Act contains other more specific provisions including intermittent leave and leave on a reduced hours schedule and definitions including spouse, parent, son, daughter, and serious health condition.

- E. An employee on family medical leave (FML) is not entitled to accrue state service credit for any full calendar months of leave without pay (LWOP) taken while on FML and shall not accrue vacation or sick leave for such months. Further, any full calendar months of LWOP shall not be included in the calculation of the six continuous months of employment set forth in Article IX of the Appropriations Act under the merit increase provisions and under the Employee Vacations and Leaves.
- F. Upon initial notification of a serious health condition, the employee must provide the Agency with a release form before returning to work (See Addendum A-6).
- G. Employees must give 30 days advance notice of the need to take FMLA leave when it is foreseeable for the birth or placement of a child for adoption or foster care or for planned medical treatment. When it is not practicable under the circumstances to provide such advance notice, such notice must be given "as soon as practicable," ordinarily within one or two business days of when the employee learns of the need for the leave. In either case, the employee requesting FMLA leave must request the leave by submitting a "request" sheet to their supervisor who will, in turn, obtain the signature of the Executive Director.

#### **18. ADMINISTRATIVE LEAVE FOR OUTSTANDING PERFORMANCE**

Employees must be in any classified position with the Agency for a minimum of one year to be considered. The administrative leave is to be used within twelve months. Employees must notify their appropriate supervisor at least three working days before use of administrative leave by submitting a "leave" request form.

## **Report Fraud, Waste or Abuse in Texas**

The State Auditor's Office is charged with conducting investigations for fraud, waste, or abuse associated with state agencies and institutions of higher education.

For more information regarding fraud reporting, visit the State Auditor's Office web site at [www.sao.texas.gov](http://www.sao.texas.gov). The office may also be contacted via the SAO Hotline at 1-800-TX-AUDIT (892-8348).

## **Report Employment Discrimination**

The Texas Workforce Commission's Civil Rights Division's programs provide an avenue for current and former employees (or people who applied for employment) to file a complaint if they believe they have been discriminated against in an employment transaction.

For more information regarding the reporting of employment discrimination, visit the Texas Workforce Commission's Civil Rights Division's website by [clicking here](#). The Civil Rights Division may also be contacted via telephone at 512-463-2642 or 888-452-4778 (in Texas only).

## **Report Public Corruption**

The Texas Rangers' Public Integrity Unit and Public Corruption Unit are tasked with investigating crimes committed by state officers and state employees, as well as allegations of public corruption. Citizens are encouraged to speak with a Texas Ranger near them regarding any public integrity or corruption allegations, and to file a complaint with the Texas Rangers where warranted.

For more information regarding how to file a complaint or contact a Texas Ranger near you, visit the Texas Department of Public Safety's website by [clicking here](#). The Texas Rangers' Public Integrity Unit and Public Corruption Unit may also be contacted via telephone at 512-424-2160.