



## Technical Guidance Time Off and Leave

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## I. Background

Time off is not only a benefit for state employees, but also enhances the wellness of employees and their families. Proper administration of an employee's time off and leave are essential.

1. Regular attendance and punctuality are an essential function of each state job so employees must request and use leave responsibly.
2. Employees are expected to request time off as far in advance as possible including a sufficient explanation and reason for the leave to determine the type of leave necessary.
3. Appointing authorities and designees are responsible for approval of leave including determining the type of leave and proper designation for Family Medical Leave Act (FMLA) and state family medical leave (SFML) purposes, subject to rule and law. Appointing authorities may delegate this responsibility to supervisors or other responsible parties but are still accountable for proper leave management. Individuals approving leave requests are expected to exercise sound judgment and to consider the business needs of the state, as well as the needs of the employee, in determining whether a request will be approved.
4. Time off should be requested on the *State of Colorado Leave/Absence Request Authorization* form (or equivalent form, including electronic leave systems). This form is also available from supervisors, appointing authorities, and department or higher education institution (department) human resources offices. It is designed to meet the state's needs while also complying with the requirements under the FMLA. Health-related information is confidential and the forms containing such information are to be kept in separate secure files with limited access.
5. Permanent employees begin earning annual and sick leave from the first day of employment. Part-time employees who work regular, non-fluctuating schedules earn leave on a prorated basis based on the percentage of the regular appointment, rounded to the nearest 1/100 of an hour. Leave for part-time employees who work irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated by dividing the number of hours paid by the number of work hours in the monthly pay period. The percentage is then multiplied by the employee's leave earning rate to derive the leave earned. Overtime hours are not included in leave calculations.
6. Although part-time employees earn leave on a prorated basis, maximum accruals are not prorated for part-time.
7. Temporary employees are not eligible for, nor earn leave unless mandated by law, i.e., jury duty and FMLA.
8. Paid leave is to be used before unpaid leave is exhausted, unless otherwise the reason for leave doesn't qualify for the type of leave available, or during a

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mandatory or voluntary furlough. The type and amount of leave depends on the specific circumstances and applicable leave rules.

9. The annualized hourly base salary rate is used in calculating the lump sum payments of unused accrued leave upon separation. The number of work hours in the final month is not part of the calculation of leave payouts so the value of leave does not vary from month to month. The annualized hourly rate is calculated by multiplying the monthly base salary rate times 12 and then dividing by 2080; this value is then multiplied by the number of accrued leave hours.
10. Annual and sick leave for employees working flexible schedules is charged based on the employee's normal working day. For example, an employee who works four 10-hour days is charged 10 hours of sick leave if the employee is ill for one of the scheduled workdays.
11. An employee may not be required to forfeit sick or annual leave as a disciplinary action.
12. Employees who are notified of layoff cannot be required to use annual leave during the notice period.
13. Leave is available for use at the beginning of the next month after it was earned, including leave earned while an employee is on paid leave. Separating employees are compensated for leave earned through the last date of employment. If an employee is out on extended leave, e.g., short-term disability (STD), the employee does not need to return to work in order to receive payment for any accrued leave.
14. Typically, an employee who is on FML and SFML; an employee who is a qualified volunteer of a qualified volunteer organization as listed by the Department of Local Affairs when directed to serve during a declared local disaster within the state; or, a member of the civil air patrol called to duty for a rescue mission have restoration rights to the same or equivalent position upon return.
15. An employee may not "borrow" against future leave or "buy back" leave that has already been used. For example, an employee who is involved in an automobile accident and subsequently reimbursed by an insurance company may not have sick leave restored by reimbursing the department for the value of the leave that was previously used.
16. Mandates to maintain a minimum balance of sick or annual leave (or a combination of both) are not permitted except under a leave sharing program or in accordance with a corrective or disciplinary action.
17. If an employee exhausts sick leave and is unable to return to work, annual leave is used. If the employee is still unable to return after exhausting annual leave and no other leave or benefit is applicable (e.g., FML, SFML, short-term disability leave, ADA), the employee may be discharged pursuant to Rule 5-6 Exhaustion of Leave and Administrative Discharge, following a good faith effort to communicate with the

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employee provided in Board Rule 7-1. The appointing authority also has discretion to grant unpaid leave.

18. Compensatory time is not leave, but a form of compensation. Appointing authorities may require the use of accrued compensatory time but cannot schedule compensatory time if that will make an employee forfeit annual leave at the end of the fiscal year.

## II. Annual Leave

Purpose: Paid leave used for personal needs including vacation.

Eligibility: Permanent employees.

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

Based on business necessity, an appointing authority has discretion to determine periods when annual leave will not be granted or when it must be taken. Such periods must be communicated to all affected employees. If the department cancels approved annual leave and the employee is not allowed a reasonable opportunity to use the leave before it is subject to forfeiture at the end of the fiscal year, the department must pay any forfeited hours by the end of the fiscal year.

For example, an employee has approved annual leave scheduled mid-June and due to an emergency within the department is required to report to work. As a result, the employee's scheduled annual leave is cancelled. Because the leave is scheduled so close to the end of the fiscal year, the employee has no opportunity to reschedule the leave and would therefore be forced to forfeit that already approved leave.

In this example, the department must pay the employee for the scheduled leave that would have otherwise been forfeited. On the other hand, if the employee causes the forfeiture of over-accrued annual leave, no payout is required. For example, a department has a policy where no annual leave can be taken in the month of June, which has been communicated in advance to employees. The employee waits until June to request the leave that is subject to forfeiture. The department denies the leave request according to the stated policy and the employee forfeits the leave at the end of the fiscal year, there is no payout. In some situations involving other types of leave, an employee may be required to use annual leave in accordance with rule. A common cause is when sick leave has been exhausted and the employee is completing the 30 day waiting period for STD benefits. An employee is also required to use all accrued leave before being placed on unpaid leave when FML and SFML is involved. For example, an employee who is adopting a child will be required to exhaust all annual leave before being placed on unpaid leave.

### Leave Earning Rates<sup>1</sup>

<sup>1</sup> Note: Part-time employees who work regular, non-fluctuating schedules earn a pro-rated amount of leave based on their regular work schedules. Leave for part-time employees working irregular, fluctuating schedules and full-time employees who work or are on paid leave less than a full month is calculated as follows:

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

Any accrued annual leave over the maximum accrual rate at the end of a fiscal year is forfeited on July 1. Upon separation, unused accrued annual leave is paid out, subject to the maximum accrual rate. An employee may not be paid for accrued unused annual leave except in separation situations. When a classified employee transfers to another classified position in a different department, the new department shall assume all liability for the employee's base salary, credited leave accruals, and other applicable personnel system benefits pursuant to C.R.S. 24-50-112.5 (5) (a). Discretion for leave payout and leave balance transfer exists when a classified employee takes a non-classified position, a non-classified employee takes a classified position, and a non-classified employee takes a non-classified position, however, best practice would be to maintain consistency in all circumstances.

An employee's annual leave earning rate is based on the total number of months of state government service, excluding temporary assignments. If a retiree accepts a temporary position, leave is not earned and previous leave earning rates do not apply.

If a retiree returns to a permanent part-time position, the annual leave earning rate is restored and leave is earned on a prorated basis.

Part-time employees advance to the next higher annual leave earning rate based strictly on months of service. For example, an employee who works 40% will earn 40% of 10 hours (4 hours) of annual leave beginning with the 61st month (6th year) of service. Although leave earnings are pro-rated for part-time, leave maximum accruals are not prorated for part-time. For information on leave earnings for employees with state service outside of the state personnel system, refer to the technical guidance, *Bringing Employees or Positions into the State Personnel System*, on the HR Portal.

Leave is available for use the first day of the following month in which it was earned. Separating employees are compensated for annual leave earned through their last date of employment. Employees who work or are on paid leave an entire month earn the full amount of annual leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on unpaid leave for part of the

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(# of hours worked ÷ total work hours available) x employee's earning rate = amount of leave earned.

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month. With the exception of furloughs, annual leave is not earned while an employee is on unpaid leave.

### III. Sick Leave

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

**Eligibility:** Permanent employees. Sick leave can also be used for the health needs of the employee's child, spouse, injured military service member or veteran as established under Rule 5-20, legal dependent, or person in the household for whom the employee is the primary caregiver. A primary caregiver is a person who consistently provides support and care for an individual in the household, which may include sharing or providing financial support. *In loco parentis* is defined as an individual who filled the role of a parent, including ongoing daily care and financial support. An employee may be required to provide documentation of the familial relationship. In the case of military caregiver leave under FMLA, a child is one of any age who is eligible for service.

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

Employees shall provide the State's *Medical Certification Form Employee's Health Condition*, the State's *Medical Certification Form Family Member's Health Condition*, the State's *Colorado Medical Leave Form (or other official document containing the same information)* or other official document containing the same information from a health care provider, when the absence is more than three consecutive full working days or the use of sick leave **shall** be denied in accordance with C.R.S. 24-50-104(7). An appointing authority has discretion to request a medical certificate for absences of less than three full consecutive working days to determine if FMLA applies or the appointing authority has a reasonable basis for suspecting abuse of sick leave. While departments are cautioned against establishing blanket policies requiring medical certificates from all employees for one or two-day absences, it is appropriate to request a medical certificate when sick leave abuse or misuse is suspected or for a pattern of suspicious sick leave use (e.g., pattern of illness on Mondays or Fridays). In addition, excessive use of sick leave may be addressed through the corrective and disciplinary action process in certain situations. Because this is a complex area, specific questions concerning potential sick leave abuse should be directed to the department's human resource office, the Division of Human Resources within the Department of Personnel & Administration, or to the department's legal counsel.

The *State of Colorado Fitness to Return* form, completed by a healthcare provider, is required for absences over 30 calendar days due to an employee's health condition. It may be required

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for absences of 30 days or less based on the nature of the condition in relation to the job. The form may also be required every 30 days for employees on intermittent FMLA if there are reasonable safety concerns regarding the employee's ability to perform job duties. This form cannot be required when leave is taken for a family member's condition.

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

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

C.R.S. 24-50-104 provides that employees shall be credited with **no more** than 80 hours sick leave per fiscal year. The 6.66 hours sick leave that a full-time employee earns each month equates to 79.92 hours in a fiscal year. There is no provision that allows crediting an additional .08 hours to employees' sick leave balances at the end of each fiscal year to equal 80 hours.

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

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

- 6/30 the last day of the fiscal year, sick leave above an employee's maximum accrual rate is converted to annual leave, then
- 7/1 on the first day of the new fiscal year, annual leave, except for the sick leave converted to annual leave, above an employee's maximum annual leave carryover rate is forfeited, finally
- 7/1 the converted sick leave hours are credited to the employee's annual leave balance and any remaining sick leave over the employee's maximum accrual rate is forfeited.

All unused sick leave is forfeited upon separation from the personnel system unless the employee is eligible for an immediate full or reduced retirement. Immediate eligibility means having met the retirement plan's requirements as of the separation date (last day employed or on the payroll). If an employee is eligible for immediate retirement at separation, such employee is paid  $\frac{1}{4}$  of unused accrued sick leave, subject to the maximum accrual rate. The retirement plan is responsible for determining eligibility for retirement, so questions about eligibility should be directed to the plan. For example, a 49-year-old employee with a March 15 birth date separates on February 28 with 30 years of service in PERA's defined benefit

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plan. Because the employee has not met PERA's defined benefit requirements to be eligible for immediate retirement on February 28, the employee is ineligible for the one-quarter sick leave payout. In another example, if an employee separates on March 1 and meets PERA's defined benefit plan requirements for retirement, the employee is eligible for the one-quarter sick leave payout regardless of whether or not the employee applies for retirement benefits. The employee must be separating to be eligible for the one-quarter payout. Employees are only eligible for this payout one time, at the initial retirement.

A returning employee's sick leave balance is restored if the employee is eligible for reemployment or reinstatement.

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

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

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

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

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Leave is not available for use until the beginning of the next month after it was earned. Employees who work or are on paid leave the entire month earn the full amount of sick leave. Leave is prorated when an employee works or is on paid leave part of the month and either terminates in the middle of the month or is on unpaid leave for part of the month. With the exception of furloughs, sick leave is not earned while an employee is on unpaid leave. Appointing authorities may send employees home and charge sick leave, or the appropriate leave if sick leave is exhausted, if an employee comes to work with what an appointing authority determines to be an illness or injury that either impacts the employee's ability to perform the job or the health or safety of others. In determining whether an employee should be placed on sick leave, the appointing authority must rely on information provided by the employee or the appointing authority's own visual observations of behaviors the employee is exhibiting (for example falling asleep at the desk, fainting, or exhibiting signs of the flu), as opposed to making assumptions about the employee's physical/mental health. A fitness-to-return certificate may be required in order for the employee to return to work.

**IV. Holiday Leave**

Purpose: Paid leave used to observe legal holidays.

Eligibility: All permanent employees receive holiday pay provided they are employed by the state when the holiday is observed. Holiday leave is prorated only when an employee is in a permanent part-time status. If a holiday occurs when an employee is on STD, the employee would be paid through those benefits and not be granted eight hours of holiday leave.

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

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

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

An employee on injury leave at the time the holiday occurs is granted the holiday and the day is not counted as an injury leave occurrence.

Approval: Ten holidays are granted by statute.

These days are Independence Day (July 4th), Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's Birthday, Washington/Lincoln (President's) Day, and Memorial Day. Many departments and institutions of higher education adopt alternative holiday schedules to better fit their operational needs.

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The Governor, the Colorado General Assembly, or the President of the United States may declare additional legal holidays or special days of observance. In addition, legislation was signed on March 27, 2001, allowing executive directors and presidents of higher education institutions to grant a state employee's request to substitute César Chávez Day on March 31 for one of the statutory holidays in the same fiscal year, subject to the provisions of the law. When granting such requests, the department must be open for business and minimally operational on both days and the employee must be able to perform work. For example, a receptionist requests approval to observe César Chávez Day in lieu of Veteran's Day. Because the work unit is not open for business on Veteran's Day, there will be no visitors to receive or calls to direct and the employee will be unable to perform work.

**Amount:** Up to eight hours provided the employee is employed by the state when the holiday is observed. Employees working flex schedules of more than eight hours a day need to request leave for the extra hours beyond eight or arrange to make up the time during the week of observance. If a holiday falls on a day a flextime or part-time employee is not scheduled to work, the employee is granted an alternate holiday at a time determined by the appointing authority or designee. Another option for avoiding both the leave request for extra hours and the alternate holiday is to change back to a regular schedule of eight hours per day during the two week period of the observed holiday.

It is recommended that alternate holiday leave be taken in the same week as the holiday. For example, if a holiday falls on a Monday in a week that a part-time employee works a regular schedule of 10 hour days on Wednesday and Thursday, the employee is eligible for four hours of holiday leave at a time determined by the appointing authority or designee. The same is true if employees scheduled or required to work a holiday. In both instances, the appointing authority or designee has the authority to schedule the four hours of holiday leave so that the part-time employee is not losing holiday leave but is not gaining an additional four hours of pay. This concept of paid time off as opposed to additional pay also applies to the partial accrual for new hires; thus, the time is treated like an alternate holiday. In addition, if a full-time employee works a partial holiday, they are paid for all hours worked. The remaining hours not worked is considered holiday pay. The employee is to be given an alternate day for the hours worked on the holiday.

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

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

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## V. Bereavement Leave

**Purpose:** The purpose of the leave is to provide time for employees to deal with personal needs during the grieving process and attend any services in connection with a death.

**Eligibility:** Permanent employees.

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

Bereavement leave goes beyond attendance at a traditional funeral. The leave is intended to be the expression of the employer's sympathy by providing time off to grieve a loss, which may include a service or gathering. Supervisors and employees have a mutual responsibility to engage in a dialogue so that the employee's needs are clear. Employees are expected to communicate their needs to the supervisor. This includes divulging the nature of the relationship and the employee's needs related to grieving and any service or gatherings.

Supervisors or appointing authorities determine the amount of leave to approve and should keep in mind that the employee's needs always have primary consideration over business necessity. Leave approval is always based on individual circumstances and will not be the same for all employees. This includes discussing the employee's relationship to the deceased, the distance, and mode of transportation to attend any services, and any other needs. This does not mean that supervisors are expected to evaluate the worth of the relationship, but rather have an understanding of how the employee is impacted when granting the requested leave. If the employee is in need of grief counseling, supervisors can refer employees to the Colorado State Employees Assistance Program or other internal EAP programs.

Supervisors or appointing authorities may require verification of attendance, such as a funeral program, if abuse is suspected. Any substantiated abuse of leave may be subject to corrective or disciplinary action, including termination of employment.

**Amount:** Up to 40 hours per occurrence.

## VI. Jury Leave

**Purpose:** Paid leave used when called to jury duty.

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

**Approval:** The appointing authority or delegate. Proof may be required.

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**Amount:** Permanent employees are granted jury leave for the period they are required to serve. Temporary employees receive paid leave for a maximum of three working days when jury duty occurs during the days they are normally scheduled to work.

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

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

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

For employees with flex schedules who are called to or selected to serve as a juror in a trial, it is recommended that the employee's work schedule be adjusted to regular 8 hour work days within the designated workweek. This will make tracking work hours more manageable. Departments need to be careful not to change the established designated workweek for overtime-eligible employees, as this would be a permanent change under the Fair Labor Standards Act. Only the work hours within the designated workweek should be adjusted.

## VII. Parental Academic Leave

**Purpose:** Attendance at academic-related activities for the employee's child or any child for whom the employee has primary responsibility.

Departments shall adopt a written policy that includes whether the leave is paid or unpaid. This includes whether any administrative leave will be granted or if employees must use their accrued annual leave concurrently.

Employees should provide notice of the need for leave at least one week in advance. In case of an emergency where the employee is not aware of the need for leave one week in advance, notice must be provided as soon as possible after the employee becomes aware of the need for leave. Employees shall then provide written verification of the need for leave with the request or upon their return to work in the case of an emergency.

**Eligibility:** Permanent employees in a non-executive or non-supervisory capacity.

**Approval:** The appointing authority or delegate.

**Amount:** Not to exceed 18 hours (prorated for part-time) in any academic year.

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### VIII. Administrative Leave

Purpose: Paid leave designed to relieve an employee of official state duties in order to participate in activities determined by the appointing authority to benefit the state.

It is not meant to be a substitute for tracking time away from the regular duty station for work activities, e.g., on-the-job training, off-site work meetings, work-related conferences and training. It is also not intended to be a substitute when corrective or disciplinary action is appropriate or to be used in place of other benefits or types of leave. Prudent use of taxpayer and personal service dollars, as well as the business needs of a department, are factors that an appointing authority must consider in determining whether administrative leave will be granted.

Administrative leave *may* be granted for the following:

1. Up to five days for local or 15 days for national emergencies per fiscal year to employees who are certified disaster service volunteers of the American Red Cross.
2. One period of administrative leave for the initial call up to active military service in the war against terrorism of which shall not exceed 90 days and applies after exhaustion of paid military leave. Administrative leave is only used to make up the difference between the employee's base salary (excluding premiums) and total gross military pay and allowances. The employee must furnish proof of military pay and allowances. This leave does not apply to regular military obligations such as the annual encampment and training.
3. Employee participation in community or school volunteer activities.
4. Employee recognition for special accomplishments or contributions in accordance with the department's established incentive plan.

Administrative leave may also be granted as an incentive award in accordance with a department's established incentive plan. For employees exempt from overtime, an appointing authority may grant discretionary administrative leave or other incentives for work in excess of 40 hours in a workweek, but such awards shall not be tied to hours worked.

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

Administrative leave *must* be granted for the following.

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1. Two hours to participate in general elections if the employee does not have three hours of unscheduled work time during the hours the polls are open.
2. Up to two days per fiscal year for organ, tissue, or bone donation for transplants.
3. To serve as an uncompensated election judge unless a supervisor determines that the employee's attendance on Election Day is essential. The employee must provide evidence of service.
4. Up to 15 days in a fiscal year when qualified volunteers or members of the Civil Air Patrol are directed to serve during a declared local disaster, provided the employee returns the next scheduled workday once relieved from the volunteer service.

Time taken for official, work-related, court matters is work time, not administrative leave. Also, administrative leave is not granted for general subpoenas not specifically related to work (e.g., civil cases, non-work-related witness testimony). Administrative leave is not granted merely because the state judicial system has issued a subpoena to an employee. If an employee is called before the state personnel director or state personnel board to provide testimony or oral argument for a matter that the employee initiated and is not a result of the employee's professional work assignment, administrative leave would be appropriate. If a supervisor or manager is called before the state personnel director or state personnel board to provide testimony or oral argument for a matter that an employee initiated, it would be considered work time, as it is a result of their professional work assignment.

Departments must track, within time keeping systems, detailed reasons for placing employees on administrative leave, e.g., community volunteer activity, incentive/reward, investigation, parental academic leave, etc., and be prepared to report this detailed information to the Director when requested.

Eligibility: Permanent employees.

Approval: The appointing authority or delegate.

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

#### **IX. Extended Administrative Leave Reporting**

Any administrative leave granted to a single employee that exceeds 20 consecutive working days must be reported to both the department executive director or equivalent and the state personnel director. While extended administrative leave is most commonly granted during a period of investigation into an employee's actions or behavior, some additional information must also be provided when reporting.

Each department through the HR Director or designee is required to complete and update their respective department's assigned google sheet by the 10th of the following month in which the administrative leave exceeds 20 consecutive working days and at the conclusion of an extended administrative leave period. The following information must be provided when reporting:

- Department name

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- Unit name, if available
- First and Last name of the employee
- Reason for being placed on administrative leave
- Name of the person, title, and contact information reporting the information
- Name of the HR Director and contact information
- Reporting date
- Date the administrative leave commenced
- Date the administrative leave concluded
- Final action taken
- Final action effective date

Each department must develop and maintain a process that ensures consistent reporting of the extended administrative leave data to the state personnel director. Departments will be required to annually attest to the completeness of the data reported to the state personnel director and that any discrepancies have been corrected.

#### **X. Family Medical Leave and State Family Medical Leave**

The State is a single employer under the FMLA and SFML. Consistent application of the rules, directives, and technical guidance is imperative.

**Purpose:** Unpaid leave used to provide a guaranteed amount of time, job protection, and continued benefits to eligible employees for reasons defined by the Act.

**Eligibility:** Permanent employees with 12 months of service including all paid and unpaid leave. Temporary employees with one year of state service and must also have worked 1250 hours in the 12 months prior to the beginning of the leave.

**Approval:** The appointing authority or delegate.

**Amount:** 480 hours (12 weeks) for traditional FML and an additional 40 hours of SFML including active duty family leave and up to 1040 hours (26 weeks) in a single 12-month period for military caregiver leave per injury per qualified event. Part-time employees receive a prorated portion of the leave.

For more detailed information, refer to technical guidance, *The Family and Medical Leave Act Including State Family Medical Leave*, on the HR Portal.

#### **XI. Military Leave**

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

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Eligibility: Permanent employees.

Approval: The appointing authority or delegate upon presentation of proper military orders.

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

For detailed information, refer to technical guidance, *Veterans, Active Military, and National Disaster Response Personnel*, on the HR Portal.

## **XII. Unpaid Leave (Leave Without Pay)**

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

Eligibility: Permanent employees.

Approval: The appointing authority or delegate.

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

The employee must pay both the state and employee portions of the premium to maintain group insurance benefits (except when FML, SFML, STD leave, or furloughs are involved). Unpaid leave extends probationary and trial service periods. These periods may also be extended by the number of days an employee is on paid leave. Unpaid leave is calculated based on the annualized hourly rate.

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

## **XIII. Short-Term Disability Leave**

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

Eligibility: Permanent employees with at least one year of state service who have applied for STD benefits within 30 days of the beginning of the absence or at least 30 days prior to the exhaustion of all sick leave.

The employee must notify the department at the same time the application for benefits is made. A reinstated employee is eligible for short-term disability leave based on the employee's former state service.

Eligibility for short-term disability leave (job protection) should not be confused with eligibility to receive STD benefit payments. An employee who does not have at least one year of state service may still receive STD benefit payments; however, the employee will not be

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eligible for the job protection of short-term disability leave. STD leave runs concurrent with all other types of leave.

**Approval:** The appointing authority or delegate when the employee has applied for, or is receiving, STD benefits.

**Amount:** Up to 180 days including the waiting period.

Note that there is a waiting period of a minimum of 30 days. An employee must exhaust all sick leave before that employee can receive salary replacement benefits. If the employee does not have accrued sick leave to cover the waiting period, accrued annual leave and/or compensatory time must be used once sick leave is exhausted

If annual leave is exhausted before the end of the waiting period, the employee is placed on unpaid leave or departments can adjust their leave sharing programs to allow donated hours to cover the remainder of the STD waiting period. However, donated leave may not be used to make the employee's salary whole once STD salary replacement begins nor can it extend beyond the 30-day waiting period. Employees, including those under FML, are not required to use annual leave beyond the waiting period because doing so will impact STD benefits.

An employee earns leave for periods of paid leave during the 30-day waiting period or when exhausting paid sick leave beyond the waiting period. Once these conditions are met, the employee no longer earns leave until the employee returns to a paid status.

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

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

#### **XIV. Make Whole Under Workers' Compensation**

**Purpose:** A policy used for employees who have a compensable on-the-job illness/injury under workers' compensation.

The policy allows an employee to use accrued sick or annual leave, as appropriate under the rules; to make up the difference between the employee's gross base salary and temporary disability payments after injury leave has been exhausted. The intent is to get as close as possible to the employee's gross base salary but not exceed it.

**Eligibility:** Permanent employees.

**Approval:** The appointing authority or delegate.

An employee may elect to use compensatory time before being placed on sick and then annual leave. In workers' compensation cases, employees do not have discretion to request

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that they not be made whole and may not turn over workers' compensation payments to the department.

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

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

For whole weeks:

Monthly salary x 12 divided by 52 = weekly salary  
Monthly salary x 12 divided by 2080 = hourly salary  
Weekly salary - workers' compensation pay = Difference divided by hourly rate = hours of leave that should be charged

For intermittent leave:

Hours missed x hourly rate - amount paid by benefits provider divided by hourly rate = hours of leave to make whole

When the condition of an eligible employee also qualifies under FMLA, the designation should be made and the FMLA runs concurrently while the employee is being made whole. When an employee has annual leave that is subject to forfeiture and the employee is making whole, the annual leave must be used prior to the end of the fiscal year.

If the workers' compensation injury is a qualifying event under the FMLA, direct supervisors are not allowed to have any contact with the health care provider. Departments must coordinate with their HR director or FMLA coordinator when requesting additional information about the employee's condition. If the compensable injury or illness is not a qualifying condition under the FMLA, departments may continue using established practices for contacting the health care provider.

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

## **XV. Injury Leave**

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

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

**Approval:** Human Resources Office.

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**Amount:** 90 occurrences (counted in whole day increments regardless of the actual hours absent during a scheduled work day).

For example, an employee absent from work for two hours for a compensable workers' compensation injury is charged one occurrence of injury leave. Also, if an employee is absent from work for two separate time frames in the same day, the employee is still charged one occurrence of injury leave. If the employee is eligible for FMLA and SFML job protection, it runs concurrently with injury leave.

## **XVI. Voluntary Furlough Leave**

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

The statutes also allow mandatory furloughs to be declared by the Governor and the Colorado General Assembly under certain conditions. When a mandatory furlough is declared, instructions and guidance will be issued; this guidance applies to voluntary furloughs.

**Eligibility:** Permanent employees.

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

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

Employees earn sick leave, annual leave, and holidays while on voluntary furlough. The state continues to pay the state's contribution of benefits as long as the employee pays the employee contribution in a timely manner. Service dates are not adjusted. An employee who is on voluntary furlough unpaid leave and experiences a qualifying event under the FMLA and SFML is removed from voluntary furlough and placed on sick and/or annual leave, as appropriate. The employee is removed from voluntary furlough leave because of the requirement that an employee on FML and SFML exhaust all paid leave before being placed on unpaid leave.

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

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

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required (a sample agreement is attached). Documentation, including written agreements and approved or rejected applications, is kept in the personnel file.

## **XVII. Victim Protection Leave**

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

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

**Eligibility:** Employees with one year of state service.

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

**Approval:** The appointing authority or delegate. Documentation of the need for leave may be required.

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

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

**Amount:** Up to three working days per fiscal year. The amount of leave is prorated for part-time.

Appointing authorities have the authority to grant additional leave without pay. Use of victim protection leave does not shield an employee from an employment action that would have otherwise occurred regardless of the use of the leave. Like other types of non-FMLA leave, restoration is to any position in the same class.

## **XVIII. Leave Sharing Program**

**Purpose:** To allow an employee to transfer annual leave to an eligible employee if that employee or an immediate family member is experiencing an unforeseeable life-altering event beyond the employee’s control.

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Departments must communicate criteria for qualifying events in their leave sharing programs prior to use.

**Eligibility:** Permanent employees with at least one year of state service who have exhausted all applicable accrued leave are eligible to receive donated leave.

Leave sharing is intended to be a “court of last resort” and is not a substitute for STD or long-term disability. During the STD waiting period, if an employee has exhausted all sick and annual leave, departments may adjust their programs to allow leave sharing for qualified events to cover the remainder of the STD waiting period. However, donated leave may not be used to make the employee’s salary whole once STD salary replacement begins nor extend the 30-day waiting period.

Leave sharing may be used to make an employee whole when an employee is receiving temporary disability payments under workers’ compensation, if allowed under a department’s leave sharing program.

**Approval:** The executive director of a department or the president of a college or university.

The transfer of donated leave between departments is allowed only with the approval of both department heads. Approval of leave sharing may only be delegated below the executive director/president level with the approval of the state personnel director.

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

For more detailed information refer to technical guidance, *Designing a Leave Sharing Program*, on the HR Portal.

## **XIX. Forms, Samples and Other Helpful Materials**

[4 CCR 801-1, State Personnel Board Rules and Personnel Director’s Administrative Procedures](#)

[Voluntary Furlough Sample Template](#)

[Voluntary Furlough Agreement Sample Template](#)

Other Technical Guidance:

- Bringing Employees or Positions into the State Personnel System
- The Family and Medical Leave Act Including State Family Medical Leave
- Veterans, Active Military, and National Disaster Response Personnel
- Designing a Leave Sharing Program

## **XX. Disclaimer**

Subsequent revisions to rule or law could cause conflicts in this information. If a rule or law conflicts with the technical guidance information, the law and rules are the official source

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upon which to base a ruling or interpretation. This document is an interpretation, not a contract or legal advice. If you need advice or further interpretation, please contact the Division of Human Resources or the AG's office.

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