



## OFFICE OF PUBLIC UTILITY COUNSEL

### **OPUC's GENERAL LEAVE PROVISIONS**

#### **1.1 Leave Policy**

OPUC offers a variety of leave options for employees. Employees are entitled to take leave or be granted leave pursuant to the terms and conditions described in this section consistent with State law.

##### **1.1.1 Leave Records**

The agency will keep a record of time and attendance for each employee including the accrual and use of vacation and sick leave, the reason an employee takes leave if the law requires the employee to inform the agency of the reason, and whether the leave taken is accounted for as sick leave, vacation leave, other paid leave, leave without pay, or other absence.

It is the responsibility of each employee to ensure that leave, time, and attendance records are maintained on a current basis and promptly reported.

##### **1.1.2 Advance Approval of Leave**

All leave, except leave for unscheduled sick leave and emergency leave, should be requested and approved in advance. Employees should ensure that they have adequate leave balances and that their absence will not interfere with the performance of their job duties. Leave approval is not automatic. While every attempt is made to approve employees' timely leave requests, the Public Counsel or his/her designee has the authority and responsibility to use discretion to ensure that adequate staff remain on duty in order to perform the work of the Agency.

When advance approval is not possible, the employee will notify the Public Counsel or the employee's supervisor as soon as possible of the dates and reasons for the absence. Unless extenuating circumstances exist, employees are expected to provide notification of absences no later than 30 minutes after their scheduled starting time.

## **1.2 Vacation Leave**

### **1.2.1 Vacation Leave Accrual and Use**

Employees begin to accrue vacation leave on their first day of employment and on the first calendar day of each succeeding month of state employment. The amount of vacation leave an employee accrues is determined by his or her length of state service. Vacation leave may not be taken until the employee has been employed with the State for six continuous months.

A new employee is eligible to take vacation leave with pay after meeting the specified requirements:

- an employee with no previous state employment may take annual leave after completing six (6) full months of continuous employment with the OPUC; or
- an employee with previous state employment who has no break in service and has completed six (6) full months or more of continuous state employment may take annual leave upon employment if his/her vacation balance has been transferred from the other state agency; or
- an employee with previous state employment who has break in service and has completed six (6) full months or more of continuous state employment may take annual leave as it is earned upon re-employment.

The six month continuous state employment requirement must be met only once during the employee's career with the State.

In addition, if the employee is on any type of paid leave that extends into the following month, the employee's accrual of leave will not be posted until the employee returns to duty, which means the employee may not take vacation leave accrued for that month until the employee returns to work. An employee forfeits this accrual if he or she does not return to duty.

An employee in a leave-without-pay (LWOP) status for a full calendar month does not accrue vacation leave for that month. An employee on LWOP or a paid leave status at the end of the month does not earn accrued leave until he/she returns to work.

Employees may carry unused vacation leave forward from one year to the next. The amount of allowable carryover hours depends on the length of state service. All vacation leave hours in excess of the maximum allowable carryover (Texas Government Code §661.152) remaining at the end of a fiscal year will be credited to the employee's sick leave balance.

### **1.2.2 Unused Vacation Leave**

An employee who resigns, is terminated, or otherwise separates from OPUC will be paid for accrued unused vacation time after a thirty (30) day waiting period, as long as the employee has six months of continuous State employment. However, if the employee is re-employed by a state agency or institution of higher education within 30 days following the date of separation from OPUC, the accrued unused balance will transfer and the employee will not be paid.

## **1.3 Sick Leave**

### **1.3.1 Sick Leave Accrual and Use**

Employees begin to accrue sick leave on the first day of employment. An employee will be credited with his/her full accrual for each full or fraction of a month worked. Full-time employees accrue sick leave at the rate of eight (8) hours per month. Part-time employees accrue sick leave at a rate in proportion to that of a full-time employee. Sick leave accumulates with the unused amount carried forward each month, and there is no limitation on the amount which may be accrued. An employee who is on leave the first day of the month may not use that month's accrual until he or she returns to duty.

An employee is eligible to use sick leave immediately upon employment with the Agency. Sick leave may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his/her immediate family who is ill. An employee who is a legal guardian of a child by court appointment may take sick leave to care for the child. Sick leave may be taken for the adoption of a child under the age of three.

### **1.3.2 Immediate Family Defined**

Immediate family is defined as those individuals who live in the same household and are related by kinship, adoption or marriage, as well as foster children who are so certified by the Department of Protective and Regulatory Services. Minor children of an employee are considered immediate family regardless of whether they live in the same household. An employee may use sick leave to care for a spouse, child or parent of the employee who does not reside in the same household for a documented medical condition.

### **1.3.3 Timely Notification**

An employee who takes unscheduled sick leave must notify his/her supervisor as soon as possible. If the absence is for more than one day, the employee must notify the supervisor of his/her status each day until the employee returns to work.

#### **1.3.4 Illness for More Than 3 Days**

When an employee is off work due to illness for more than three (3) consecutive work days, he/she must submit with the timesheet a doctor's certification or an acceptable written statement of facts showing the nature of the illness. If an illness results in the absence of three working days or less, the Public Counsel has the discretion to require a doctor's certification or an acceptable written statement.

#### **1.3.5 Return to Work**

On returning to duty after taking sick leave, the employee shall without delay complete the prescribed leave form for sick leave.

#### **1.3.6 Abuse of Sick Leave**

Abuse of sick leave may be evident when sick leave is consistently taken as it is earned, or the employee fails to maintain sick leave balances without good cause or a pattern of being sick before or after a scheduled holiday, vacation, or personal day; on a desirable day off; a specific day of the week; a specific or unique work day. An employee's abuse of sick leave may subject the employee to disciplinary action, including termination.

#### **1.3.7 Unused Sick Leave Balance**

Once an employee terminates employment with the State, the employee is not entitled to payment for any accrued but unused sick leave balance. An employee who is restored to state employment following military service is entitled to have his or her unused sick leave balance restored. Retirees who return to state employment will not have their unused sick leave balances restored.

#### **1.3.8 Sick Leave From Direct Transfer**

Employees who transfer directly from one state agency to another will have their sick leave balances transferred. Employees who separate from an agency under a formal Reduction in Force are entitled to have their sick leave balances restored if they are re-employed by the State within 12 months. Employees separated other than for a formal Reduction in Force and re-employed by a state agency may have their sick leave balances restored only if the employee is re-employed by the same state agency within 12 months after the end of the month in which the employee separates from state employment and if there has been a break in employment with the State of at least 30 calendar days, or the employee is re-employed by a different state agency within 12 months after the end of the month in which the employee separates from state employment. An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.

## **1.4 Donation of Sick Leave Directly to Another Employee**

An employee may donate any amount of his/her accrued sick leave to another OPUC employee. The employee receiving the donated sick leave must have exhausted all of his or her sick leave balance, including any amounts received from the agency's sick leave pool. Any sick leave donated to another employee cannot be used towards credit for retirement.

## **1.5 Extended Sick Leave**

A serious injury or a major illness may constitute an adequate need for extended sick leave after all accrued leave (sick, vacation and compensatory) has been exhausted. All requests for extended sick leave shall be in writing to the Public Counsel and shall include a doctor's statement outlining the injury or illness, the treatment required, expected duration of the injury or illness, and the anticipated date of the employee's return to work. The Public Counsel will determine whether to grant extended sick leave based upon the following criteria:

- Number of years of service with the Agency (Employee must have been employed for a minimum for six months before he/she is eligible for extended sick leave.)
- Quality of employee's job performance.
- History of employee's sick leave utilization (leave balance pattern, etc.) Sick leave consistently taken as it is earned, or failure to maintain sick leave balances without good cause or a pattern of being sick before or after a scheduled holiday, vacation, or personal day; on a desirable day off; a specific day of the week; a specific or unique work day may not be treated as responsible use.

The Public Counsel may make an exception to the policy on an individual basis after a review of the merits of the particular case.

## **1.6 Sick Leave Pool**

### **1.6.1 Purpose**

OPUC has established a Sick Leave Pool to benefit other Agency employees who have exhausted all paid leave due to a catastrophic injury or illness. Sick Leave Pool is a form of paid leave.

### **1.6.2 Definitions**

**Catastrophic Injury or Illness:** A catastrophic injury or illness is defined as 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 time earned by that employee and to lose sick leave compensation from the State for the employee.

Pregnancy, childbirth (including cesarean deliveries), or related medical conditions will not be considered catastrophic under routine and/or normal conditions. The Sick Leave Pool is not intended to be used when an employee has complications due to elective surgery.

**Immediate Family:** Immediate family is defined as those individuals related by kinship, adoption, marriage, or foster children who are so certified 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.

**Licensed Practitioner:** A licensed practitioner, as defined by the Texas Insurance Code, is one who is practices within the scope of his/her license.

### **1.6.3 Requesting Sick Leave Pool**

An employee must submit a written request for Sick Leave Pool leave to the Public Counsel for approval. The employee must also provide a medical practitioner's statement that includes sufficient information to evaluate the request including a diagnosis and the proposed length of absence from work. If the request is for an immediate family member, the doctor should indicate the length of time the employee is required to assist the family member. The amount of pool leave granted, if any, will be determined by the Public Counsel.

Before a Sick Leave Pool request will be granted, the following factors will be taken into consideration:

- Severity of the illness or injury;
- History of employee's sick leave utilization (leave balance pattern, etc.) Sick leave consistently taken as it is earned, or failure to maintain sick leave balances without good cause' or a pattern of being sick before or after a scheduled holiday, vacation, or personal day; on a desirable day off; a specific day of the week; a specific or unique work day may not be treated as responsible use.
- Quality of employee's job performance; and
- Intention to return to work.

Pregnancy, childbirth (including cesarean deliveries), or related medical conditions will not be considered catastrophic under routine and/or normal conditions.

### **1.6.4 Employee Donations to Sick Leave Pool**

All donations of sick leave hours to the Sick Leave Pool are strictly voluntary. The policies governing donations to the pool are:

- active employees may donate time;
- terminating/retiring employees may donate sick leave at the time of separation; and
- employees who make donations to the pool cannot stipulate that their donations can be used only by a particular person.

### **1.6.5 Maximum Amounts Available**

The amount of Sick Leave Pool granted per request will be limited to 30 working days (240 hours). The employee may reapply for additional Sick Leave Pool if the amount previously granted is insufficient to cover the employee's absence. The subsequent requests are subject to the same restrictions as indicated previously, including additional medical practitioner's statements. Although employees may make additional requests for Sick Leave Pool, the total amount granted for the catastrophic injury or illness cannot exceed the lesser of 1/3 of the pool balance or 90 days (720 hours).

### **1.7 Holidays**

Eligible employees are entitled to a paid day off from work on national, state and optional holidays observed by the state. An employee is eligible to a paid day off for a holiday if the holiday does not fall on a week-end or the employee is not on leave without pay (LWOP).

For skeleton crew state holidays, the Public Counsel will ensure that the agency has enough state employees on duty to conduct business of the Agency. The Public Counsel has the authority to use his/her discretion in deciding who will work on skeleton crew days.

Employees who work on an observed national or state holiday will receive holiday compensatory time for those hours worked for use during the 12-month period following the date of the holiday worked.

To be paid for a holiday that falls on a day other than the first or last workday of the month, the employee must be a state employee on the day before and the day after the holiday. For purposes of determining holiday pay, a state employee includes someone who is using paid leave from a state agency. It does not include an individual who is taking leave without pay.

However, if the holiday falls on the first workday of a month, the employee must be a state employee on the day immediately after the holiday to be paid. If the holiday falls on the last workday of the month, the employee must be a state employee on the day immediately before the holiday to be paid.

An employee is entitled to take off an optional holiday (Rosh Hashanah, Yom Kippur, or Good Friday) if he/she agrees to relinquish a state holiday (skeleton crew day) during that same year. If the employee fails to work a skeleton crew day in the year following the optional holiday taken off, either his/her pay will be reduced by the amount owed to the state, or a day of vacation leave will be charged instead.

## **1.8 Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave, or to substitute appropriate paid leave, for an FMLA qualifying event without fear of being terminated from their job or being forced into a lower job upon their return. An employee must use all available leave before taking unpaid leave and being placed on leave without pay status.

### **1.8.1 Eligibility**

Eligibility for FMLA leave is limited to employees who have been employed by the State for at least 12 months, and who have worked at least 1,250 hours during the 12 months immediately preceding the start date of the FMLA leave. When calculating the required 12 months of state employment for FMLA eligibility, all State employment will be counted and it need not be continuous.

Eligible employees are entitled to twelve workweeks of job-protected leave in a rolling 12-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- to care for the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his or her job;
- any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty" (or has been notified of an impending call or order to active duty) is support of a contingency operation. Examples of a qualifying exigency may include: short-term deployment; military events and related activities; child care duties and school activities; financial and legal arrangements; counseling; rest and recuperation; and post-deployment activities.

Eligible employees who are the spouse, son, daughter, parent, or next of kin of a current member of the U.S. Armed Forces (including the National Guard or Reserves) are entitled to twenty-six workweeks of unpaid leave during a single 12-month period to care for a covered service member with a serious injury or illness (Military Caregiver Leave). This approach is required regardless of the method used by the Agency to determine the employee's 12 workweeks of leave entitlement for other FMLA qualifying reasons.

### **1.8.2 Serious Health Condition Defined**

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

### **1.8.3 Advance Notice**

If the need for FMLA leave is foreseeable, an employee seeking to use FMLA leave is required to provide a 30-day advance notice of the need for the leave. If notice cannot be provided 30 days in advance, the employee should notify the Agency as soon as practicable. In most cases, this means the same day or the next business day.

### **1.8.4 FMLA Request Procedures**

Employees must follow specific procedures when requesting leave under the FMLA. These procedures are detailed as follows:

- Contact the Director of Administration to obtain and complete the required paperwork, including any required certifications.
- Notify the Public Counsel.
- If intermittent leave is requested, the employee must provide the Public Counsel and the Director of Administration with a proposed schedule and duration.

While on FMLA leave, an employee will be required to communicate with the employee's supervisor. The employee also must furnish the Agency with periodic reports of the employee's status and intent to return to work. The notice of the intent to return to work must include the specific date the employee is requesting to return to work.

### **1.8.5 Certifications**

An employee requesting FMLA leave due to a serious health condition affecting the employee or a covered family member may be required to provide certification from a health care provider supporting the employee's request. The Agency, at its own expense, may require the employee to obtain second and third medical opinions. The Department of Labor Certification of Health Care Provider form must be obtained from the Director of Administration and completed by health care provider.

An employee requesting FMLA leave for a qualifying exigency may be required to provide a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which the FMLA leave is requested, including information on the type of qualifying exigency.

### **1.8.6 Intermittent Leaves and Reduced Schedules**

Leave for child birth or placement may not be taken intermittently or on a reduced work schedule except with the agreement of the Public Counsel. Other FMLA leave may be used intermittently if medically necessary or because of a qualifying exigency. If the request to use intermittent leave is for a planned medical treatment, the employee must make a reasonable effort to schedule the treatment in a manner that does not unduly disrupt the Agency's business operations.

### **1.8.7 Temporary Transfer**

If an employee requests intermittent or reduced schedules leave for medical reasons, the Public Counsel may temporarily transfer the employee to an available alternative position for which the employee is qualified, and which has equivalent pay, if the alternative position better accommodates recurring periods of leave than the employee's regular position.

### **1.8.8 Job Restoration**

An eligible employee who takes FMLA leave is entitled to be restored to his or her former position, or to an equivalent position with equivalent pay, and other terms and conditions of employment provided that all requirements for returning to work have been met.

### **1.8.9 Return to Work**

If the employee has taken FMLA leave due to a serious health condition, the employee may be required to provide a doctor's certification that he/she is able to resume work.

Failure of the employee to report back to work at the end of the prescribed period, without prior written approval from the Public Counsel, will be considered unauthorized leave without pay and may subject the employee to disciplinary action, including termination.

### **1.8.10 Maintenance of Health Benefits**

During the time an employee is on FMLA leave, the Agency will maintain group health insurance coverage, including family coverage, for an employee on the same terms as if the employee continued to work.

An employee who takes FMLA leave without pay is responsible for paying his/her portion of health insurance premiums. Arrangements will need to be made for employees taking unpaid FMLA leave to pay their share of health insurance premiums.

## **1.9 Parental Leave**

Parental leave is available for employees who are not eligible for FMLA leave. Employees with fewer than 12 months of state service or less than 1,250 hours in the 12 months immediately preceding the start of the leave are entitled to a parental leave, not to exceed 12 weeks, for the birth of a child or the adoption or foster care placement of a child under three years of age.

The employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay. Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.

Employees anticipating using parental leave should notify the Director of Administration at the earliest possible opportunity in order to allow ample time to plan for covering duties for the duration of the absence.

### **1.10 Emergency Leave**

Employees are entitled to Emergency Leave (leave with pay) for a death in the employee's family. An employee's family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren.

Requests for Emergency Leave due to a death in an employee's family should be submitted to the Public Counsel, or the Public Counsel's designee, for approval. The amount of leave granted is generally 3 days, but additional days may be granted at the discretion of the Public Counsel.

In addition to granting emergency leave for the death of an employee's family member, the Public Counsel shall grant Emergency Leave if an employee requests the leave and the Public Counsel determines that the employee has shown good cause for taking the Emergency Leave. The Public Counsel may not grant Emergency Leave if the Public Counsel believes in good faith that the employee does not intend to return to the employee's position with the agency on the expiration of the Emergency Leave. An employee is not required to request Emergency Leave if the Public Counsel grants Emergency Leave due to weather conditions or in observance of a holiday.

### **1.11 Time Off to Vote**

OPUC grants employees up to two hours of paid time off to vote in each national, state or local election.

### **1.12 Jury Duty and Compliance with Subpoenas**

An employee is entitled to serve on a jury without a deduction in salary including a deduction for any fee or compensation the employee receives for jury service.

An employee who complies with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding will be granted leave if the employee is serving in a non-official capacity pursuant to a subpoena.

### **1.13 Educational Activities Leave**

An employee may use up to eight hours of sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12<sup>th</sup> grade. The employee must give reasonable notice of his or her intention to use this leave. Educational activities are school-sponsored activities including parent-teacher conference, tutoring, volunteer programs, field trips, classroom programs, school committee meetings, academic competitions, and athletic, music or theater programs.

### **1.14 Leave During Agency Investigation**

The Public Counsel may grant leave without a deduction in salary to a state employee who is the subject of an agency investigation, a victim of an act or event that is subject to an investigation, or a witness to an act or event that is the subject of an investigation.

### **1.15 Military Leave**

Employees are eligible for the following types of leave for military purposes:

- Authorized training or duty for the state's military forces a reserve branch of the U. S. Armed Forces, or a state or federally authorized urban rescue team.
- Activation during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code.
- Activation to State active duty as a member of the state military forces by the Governor because of an emergency.
- Activation to Federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that service member provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible unreasonable, or precluded by military necessity.

A variety of factors impact the specific leave you may be eligible for. Any questions regarding military leave should be directed to the Director of Administration.

### **1.16 Medical and Mental Health Care Leave for Certain Veterans**

A state employee who is a veteran, as defined by Section 434.023(a) of the Texas Government Code, and who is eligible for health benefits under a program administered by the Veterans Health Administration (VHA) of the United States Department of Veterans Affairs may be granted leave without a deduction in salary or loss of vacation time, sick leave, overtime, or comp time to obtain medical and mental health care administered by the VHA. The Public Counsel has authority to grant up to 15 days each fiscal year. At the discretion of the Public Counsel, additional days of leave may be granted annually if the Public Counsel determines it is appropriate for the employee.

### **1.17 Blood Donation Leave**

OPUC will allow sufficient time off without a deduction in salary or approved leave to donate blood not more than four times in a fiscal year. The employee shall get approval in advance from the Public Counsel before taking time off. Upon returning to work, the employee shall provide the Agency with proof that the employee donated blood during the time off. If an employee fails to provide documentation of blood donation, then the agency will deduct from the employee's salary or accrued leave the time off, whichever the employee chooses.

### **1.18 Administrative Leave for Outstanding Performance**

Administrative leave with pay may be granted by the Public Counsel as a reward for outstanding performance. Employee performance should be documented by the Agency. The total amount of leave granted may not exceed thirty-two (32) hours per employee during a fiscal year.

### **1.19 Foster Parent Leave**

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (DFPS), is entitled to a paid leave of absence to meetings held by the DFPS regarding the foster child. In addition, the employee may use this entitlement to attend admission, review and dismissal meetings held by a school district regarding the foster child.

### **1.20 Volunteer Firefighters/Emergency Medical Services Training Leave**

Volunteer firefighters and emergency medical services volunteers are entitled to paid leave not to exceed five (5) working days each fiscal year for attending training services conducted by a state agency or institution of higher education.

An employee who is a volunteer firefighter and/or an emergency medical services volunteer and is called to duty during working hours is entitled to paid leave at the discretion of the Public Counsel.

### **1.21 Certified American Red Cross Activities Leave**

Any employee who is a certified disaster service volunteer of the American Red Cross, or who is in training to become such a volunteer, may be granted paid leave – without a deduction in salary or loss of vacation, sick leave, overtime leave, or state compensatory time – not to exceed 10 days each fiscal year to participate in specialized disaster relief services for the American Red Cross. The employee must have the Public Counsel's authorization in addition to a request from the American Red Cross and the approval of the Governor's Office.

### **1.22 Bone Marrow and Organ Donation Leave**

An employee is entitled to five (5) working days per fiscal year to serve as a bone marrow donor or thirty (30) days per fiscal year to serve as an organ donor.

### **1.23 Assistance Dog Training Leave**

An employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted up to 10 working days of paid leave in a fiscal year for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee.

### **1.24 Amateur Radio Operator Leave**

A state employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed ten (10) days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time. The employee must have the Public Counsel's authorization in addition the approval of the Governor's Office.

### **1.25 Court Appointed Special Advocates (CASA) Volunteers**

A state employee may be granted paid leave not to exceed five hours each month to participate in mandatory training or to perform volunteer services for Court Appointed Special Advocates. This leave is provided to an employee without a deduction in salary or loss in vacation leave, sick leave, overtime leave, or state compensatory leave.

### **1.26 Reserve Law Enforcement Office Training Leave**

State employees who are reserved law enforcement officers as defined by Texas Occupations Code, section 1701.001, are entitled to paid leave not to exceed five working days each fiscal biennium to attend training required by Texas Occupations Code, section. 1701.351.

### **1.27 Leave Without Pay**

Leave Without Pay (LWOP) is the temporary absence from duty of an employee who has paid leave available. The Public Counsel may grant leave without pay (LWOP) subject to the following provisions:

- The leave is unpaid.
- The leave may not exceed 12 months
- Vacation leave and sick leave, if appropriate, must be exhausted prior to requesting LWOP except in instances of disciplinary actions, leave covered by workers' compensation benefits, or active military duty situations.
- Approved LWOP constitutes a guarantee of employment for a specified period of time, subject to fiscal constraints.
- Any full or partial calendar month of LWOP does not constitute a break in employment, but also does not count for purposes of state service credit, with the exception of an employee returning from military leave without pay. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave entitlements.

The Public Counsel may make exceptions to these limitations when it is deemed to be in the best interest of the Agency, as allowed by law.

An employee who is on LWOP will have his or her compensation reduced for the pay period by an amount in accordance with the General Appropriations Act and rules adopted by the Comptroller. An employee placed in LWOP status and remaining in such a status for one or

more complete pay periods will not accrue vacation or sick leave or longevity credit for the months absent. Employees on LWOP for a full calendar month or more are responsible for all insurance premiums (unless excepted under provisions of the FMLA).

### **1.27.1 Approved Leave Without Pay**

#### **Request from Employee**

Employees requesting LWOP must submit his/her request to the Public Counsel. The request must include a start date and an ending date, the reasons for the LWOP request, and sufficient documentation supporting the employees request for LWOP. Approval is not guaranteed. If the request is not approved, and the employee is unable or declines to remain on the job, the employee is subject to disciplinary action, up to and including termination.

If the request for LWOP is for FMLA leave due to a serious health condition affecting the employee or a covered family member, the employee may be required to provide certification from a health care provider supporting the employee's request and comply with the Agency's policies and procedures for FMLA leave.

#### **Return to Work**

Employees are expected to return to work immediately upon the expiration of the approved dates for LWOP, unless they have requested and received approval for an extension. Failure to return to work from LWOP on the approved return date may result in unauthorized LWOP and subject the employee to disciplinary action, up to and including termination.

### **1.27.2 Unauthorized Leave Without Pay**

Unauthorized LWOP differs from approved LWOP status, in that an employee is not guaranteed his/her job upon returning to work. The following situations result in unauthorized LWOP:

- an employee does not report or return to work and all accrued leave balances have been exhausted;
- a new employee takes vacation leave prior to becoming eligible (6-month continuous state service requirement);
- an employee takes unauthorized leave; or
- an employee is placed on leave without pay for disciplinary reasons.

Unauthorized LWOP may result in disciplinary action up to and including termination, depending on the circumstances surrounding the unauthorized LWOP incident.

The employee's pay will be reduced at the regular rate of pay in effect at the time the employee went on unauthorized LWOP. If an employee is on unauthorized LWOP status on the first day of the month, the employee will not receive annual or sick leave accruals for that month until he/she returns to work. If the employee returns to work within the same month, the annual and sick leave accruals will be credited at that time.