

**TEXAS TRANSPORTATION COMMISSION**

ALL Counties

**MINUTE ORDER**

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §4.50, Purpose, §4.51, Definitions, §4.55, Contribution Returns, and §4.56, Withdrawals all relating to sick leave pool program to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §4.50, §4.51, §4.55, and §4.56, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Recommended by:

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Director, Human Resources Division

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Executive Director

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Minute Number	Date Passed
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1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes  
3 amendments to §4.50, purpose, §4.51, definitions, §4.55,  
4 contribution returns, and §4.56, withdrawals, concerning the  
5 sick leave pool program.

6

7 EXPLANATION OF PROPOSED AMENDMENTS

8 The amendments revise definitions, change eligibility  
9 requirements, and clarify existing language. These changes will  
10 allow the department to control abuse of the sick leave pool,  
11 make the program more consistent with other state agencies' sick  
12 leave pool programs, and more specifically tailor the program to  
13 ensure the leave is available only to those dealing with a  
14 catastrophic illness or injury.

15

16 Amendments to §§4.50-4.51 and §§4.55-4.56 require employees to  
17 exhaust all types of paid leave, instead of just sick leave,  
18 before being eligible to obtain leave from the sick leave pool.  
19 This change will make the department's sick leave pool program  
20 consistent with those of other state agencies. It will also  
21 decrease the perception that the sick leave pool program is  
22 susceptible to abuse, which is expected to increase employees'  
23 willingness to donate their excess sick leave to the pool.

24

25 Amendments to §4.51, Definitions, clarify that Human Resources  
26 Officer means an employee with a human resources business job

1 title; add a definition of paid leave to include accrued sick  
2 leave, vacation leave, and regular or Fair Labor Standards Act  
3 compensatory time earned by an employee; clarify that "severe  
4 physical condition" refers to the condition of the patient,  
5 regardless of whether the patient is the employee or the  
6 employee's family member and requires them to be incapacitated  
7 instead of off work for 12 continuous weeks or more for the  
8 current episode. Subsequent paragraphs are renumbered.

9

10 Amendments to §4.56, Withdrawals, change the restriction on  
11 requests for withdrawal of sick leave criteria from abuse of  
12 sick leave to abuse of any type of leave in the 12 months  
13 preceding the date that leave from the pool will be needed.  
14 Employees can use any type of their own accrued leave when they  
15 are out of work due to illness. Broadening the definition of  
16 leave abuse that would make an employee ineligible for sick  
17 leave pool provides better control of the program and decreases  
18 the perception that the sick leave pool program is susceptible  
19 to abuse. Limiting the time during which an employee is not  
20 eligible for sick leave pool to the 12 months preceding the need  
21 for the leave will allow employees to change the behavior that  
22 led to the discipline and allow them to again become eligible  
23 for sick leave pool. These amendments allow the department to  
24 better protect its assets by focusing the stricter controls on  
25 those employees who are most likely to attempt to abuse the  
26 program without making it unnecessarily difficult for other

1 employees to obtain leave under the program.

2

3 FISCAL NOTE

4 James Bass, Chief Financial Officer, has determined that for  
5 each of the first five years the amendments as proposed are in  
6 effect, there will be no fiscal implications for state or local  
7 governments as a result of enforcing or administering the  
8 amendments.

9

10 Diana L. Isabel, Director, Human Resources Division, has  
11 certified that there will be no significant impact on local  
12 economies or overall employment as a result of enforcing or  
13 administering the amendments.

14

15 PUBLIC BENEFIT

16 Ms. Isabel has certified that there will be no significant  
17 impact on local economies or overall employment as a result of  
18 enforcing or administering the amendments.

19

20 PUBLIC BENEFIT AND COST

21 Ms. Isabel has also determined that for each year of the first  
22 five years the sections are in effect, the public benefit  
23 anticipated as a result of enforcing or administering the  
24 amendments will be better protection of department assets, more  
25 effective use of employee time and better use of the hours  
26 donated to the sick leave pool. There are no anticipated

1 economic costs for persons required to comply with the sections  
2 as proposed. There will be no adverse economic effect on small  
3 businesses.

4

5 SUBMITTAL OF COMMENTS

6 Written comments on the proposed amendments to §4.50, §4.51,  
7 §4.55, and §4.56, may be submitted to Diana L. Isabel, Director,  
8 Human Resources Division, Texas Department of Transportation,  
9 125 East 11th Street, Austin, Texas 78701-2483. The deadline  
10 for receipt of comments is 5:00 p.m. on August 11, 2008.

11

12 STATUTORY AUTHORITY

13 The amendments are proposed under Transportation Code, §201.101,  
14 which provides the Texas Transportation Commission with the  
15 authority to establish rules for the conduct of the work of the  
16 department, and more specifically, Government Code, §661.002  
17 which provides that the governing body of a state agency shall  
18 adopt rules and prescribe procedures relating to the operation  
19 of the agency sick leave pool.

20

21 CROSS REFERENCE TO STATUTE

22 Government Code, Chapter 661, Subchapter A.

1 SUBCHAPTER E. SICK LEAVE POOL PROGRAM

2 §4.50. Purpose. The purpose of the sick leave pool program is  
3 to provide additional sick leave for an employee when the  
4 employee or the employee's immediate family member has a  
5 catastrophic illness or injury which causes the employee to  
6 exhaust all paid leave [~~sick leave time~~]. Authority for the  
7 creation of the sick leave pool program is contained in  
8 Government Code, Chapter 661, Subchapter A, State Employee Sick  
9 Leave Pool.

10

11 §4.51. Definitions. The following words and terms, when used  
12 in the sections under this subchapter, shall have the following  
13 meanings, unless the context clearly indicates otherwise.

14 (1) Catastrophic illness or injury--A severe condition or  
15 combination of conditions affecting the mental or physical  
16 health of an employee or an employee's immediate family member  
17 that requires the services of a health care provider for a  
18 prolonged period of time and that forces the employee to exhaust  
19 all paid [~~sick~~] leave earned by that employee.

20 (2) Contribute--To give sick leave from an employee's  
21 personal sick leave account to the department sick leave pool.

22 (3) Different but related condition--A secondary  
23 catastrophic condition that occurs at a later date and is caused

1 by a primary catastrophic condition such as cancer, which  
2 spreads from one part of the body to another.

3 (4) Discipline--Written reprimand, probation, suspension  
4 without pay, involuntary demotion, involuntary transfer  
5 (lateral), or disciplinary reduction in pay.

6 (5) Employee--A person, other than the executive  
7 director, who is employed by the department.

8 (6) Health care provider--A medical doctor (MD) or a  
9 doctor of osteopathy (DO) who is licensed and authorized to  
10 practice in this country or in a country other than the United  
11 States in accordance with the law of that country, and who is  
12 performing within the scope of his or her practice as defined  
13 under applicable law.

14 (7) Human resources officer--An employee with a human  
15 resources business job title and [~~in a district, division, or~~  
16 ~~office~~] who is responsible for verifying the accuracy of all  
17 employee paid [~~sick~~] leave records. If more than one employee  
18 has these responsibilities, their activities will be coordinated  
19 for the purpose of this subchapter.

20 (8) Immediate family--Individuals related by kinship,  
21 adoption, or marriage who are living in the same household,  
22 foster children living in the same household and certified by  
23 the Texas Department of Family and Protective Services, or a

1 spouse, child, or parent of the employee who does not live in  
2 the same household and who needs care and assistance as a direct  
3 result of a documented medical condition.

4 (9) Licensed psychiatrist--A psychiatrist licensed by a  
5 state medical licensing board.

6 (10) Paid Leave--Accrued sick leave, vacation leave, and  
7 regular or Fair Labor Standards Act compensatory time earned by  
8 an employee.

9 (11) [~~+10~~] Pool administrator--The Director of the Human  
10 Resources Division or designee who administers the department's  
11 sick leave pool program.

12 (12) [~~+11~~] Request--An initial application for  
13 withdrawal from the sick leave pool or an application for an  
14 extension of a withdrawal due to a catastrophic illness or  
15 injury.

16 (13) [~~+12~~] Severe physical condition--A physical illness  
17 or injury that will likely result in death or causes the patient  
18 [~~employee~~] to be incapacitated [~~off-work~~] for 12 continuous  
19 weeks or more for the current episode.

20 (14) [~~+13~~] Severe psychological condition--A  
21 psychological illness that results in:

22 (A) a patient being suicidal or capable of harming  
23 themselves or others and requires five days or more inpatient

1 hospitalization; or

2 (B) electroshock treatment.

3 (15) [~~(14)~~] Sick leave--Leave taken when sickness,  
4 injury, or pregnancy and confinement prevent the employee's  
5 performance of duty or when the employee is needed to care and  
6 assist a member of his or her immediate family who is actually  
7 ill.

8 (16) [~~(15)~~] Sick leave pool--A department-wide pool that  
9 receives voluntary contributions of sick leave from employees  
10 and which transfers approved amounts of sick leave to eligible  
11 employees.

12 (17) [~~(16)~~] Withdrawal--An approved transfer of sick  
13 leave hours from the department sick leave pool.

14

15 §4.55. Contribution Returns.

16 (a) Restrictions.

17 (1) An employee or employee's immediate family member  
18 must suffer an illness or injury, not necessarily catastrophic,  
19 to have the employee's contribution returned.

20 (2) Regardless of the number of requests, the number of  
21 hours that may be returned to an employee shall not exceed the  
22 total number of hours he or she has contributed since the  
23 beginning of the program, June 1, 1990.

1           (3) All paid [~~accrued-sick~~] leave must be exhausted by  
2 the employee before hours will be returned from a previous  
3 contribution.

4           (4) The maximum number of hours that may be returned per  
5 request shall not exceed the amount needed. The amount needed  
6 is determined from the information provided by the health care  
7 provider.

8           (5) If the pool balance cannot accommodate the amount  
9 needed, the employee shall be refunded one-third the balance of  
10 the pool.

11           (6) An employee who is planning to retire and who has  
12 contributed sick leave to the pool may not have his or her  
13 contributions returned in order to receive a retirement credit.

14           (b) Procedures.

15           (1) The employee shall complete a withdrawal of  
16 contribution form prescribed by the pool administrator.

17           (2) The human resources officer shall verify all paid  
18 [~~sick~~] leave balances and the date and time all paid [~~accrued~~  
19 ~~sick~~] leave was or will be exhausted.

20           (3) The pool administrator shall review the withdrawal of  
21 contribution form and approve or deny the transfer of hours from  
22 the sick leave pool to the employee's personal sick leave  
23 account.

1

2 §4.56. Withdrawals.

3 (a) Restrictions.

4 (1) An employee or an employee's immediate family must  
5 have a catastrophic illness or injury to be eligible to withdraw  
6 from the pool. The patient's health care provider must certify  
7 in writing that the illness or injury of the employee or member  
8 of the employee's immediate family is catastrophic and that the  
9 catastrophic illness is the reason the employee needs to be out  
10 of work.

11 (2) A written certification from a health care provider  
12 must be submitted with all requests for withdrawals. Requests  
13 related to severe psychological conditions must be certified by  
14 a licensed psychiatrist. The certification:

15 (A) shall include:

16 (i) the diagnosis and prognosis of the condition or  
17 combination of conditions;

18 (ii) the date the employee or employee's immediate  
19 family member will be able to return to activities of daily  
20 living;

21 (iii) the amount of time the employee will be needed  
22 to provide primary care if the certification is for the  
23 employee's immediate family member; and

1 (iv) if the certification is for the employee's  
2 immediate family member, the specific type of care the employee  
3 needs to provide;

4 (B) shall be in a form prescribed by the pool  
5 administrator; and

6 (C) is confidential, unless otherwise required by law,  
7 and may only be released to the human resources officer.

8 (3) With the request for withdrawal, an employee who has  
9 been formally disciplined for abuse of [~~sick~~] leave in the 12  
10 months preceding the date on which the leave from the pool will  
11 be needed must provide, at his or her expense, a second health  
12 care provider certification from a different doctor chosen by  
13 the department. The pool administrator will deny the request if  
14 the second health care provider does not certify that a  
15 catastrophic condition exists.

16 (4) The employee must submit an updated health care  
17 provider's certification that certifies that the catastrophic  
18 illness or injury still exists, and that it is necessary for the  
19 employee to be off work to recover or assist in the recovery  
20 from the catastrophic illness or injury before an extension may  
21 be approved.

22 (5) An employee's use of a transfer from the sick leave  
23 pool for family members not residing in that employee's

1 household is strictly limited to the time necessary to provide  
2 assistance to a spouse, child, or parent of the employee who  
3 needs such care and assistance as a direct result of a  
4 documented medical condition.

5 (6) The maximum number of hours that may be granted per  
6 catastrophic condition per employee is 720 hours (90 work days)  
7 or one third of the pool balance, whichever is less at the time  
8 a request is received. If there is a different but related  
9 physical catastrophic condition, an employee may receive a  
10 second grant of up to 720 hours (90 work days) or one-third of  
11 the pool balance, whichever is less at the time the request is  
12 received.

13 (7) When the pool balance is below 7200 hours, an  
14 employee may not be transferred more than 340 hours  
15 (approximately two months) per request, unless unpaid leave is  
16 incurred before the request is approved. If unpaid leave is  
17 incurred, the employee may not be transferred more than the sum  
18 of the unpaid leave and 340 hours. Additionally, the pool  
19 administrator will approve or deny all requests in the order in  
20 which they are received.

21 (8) The time transferred will begin on the date and time  
22 the employee exhausted all paid [~~sick~~] leave or, in cases that  
23 are eligible for workers' compensation payments, after the

1 period covered by the last workers' compensation check  
2 distributed.

3 (9) An employee who uses pool sick leave in accordance  
4 with this subchapter is not required to pay back that leave.

5 (10) An employee must exhaust all paid [~~sick~~] leave  
6 before using hours approved from the sick leave pool.

7 (11) All withdrawals from the pool must be used solely  
8 for the catastrophic illness or injury for which they were  
9 granted.

10 (12) An employee who is in need of additional sick leave  
11 after exhausting all paid [~~sick~~] leave shall exhaust all  
12 available extended sick leave before using time granted from the  
13 sick leave pool.

14 (13) An employee who is injured on the job, who is  
15 entitled to receive workers' compensation payments, and who  
16 chooses to integrate his or her sick leave, and vacation leave,  
17 or compensatory time is also eligible to receive a withdrawal in  
18 accordance with this subchapter.

19 (14) Hours from the sick leave pool may be granted in a  
20 block of time and used on an as needed basis. The pool  
21 administrator may require the unused hours to be returned to the  
22 pool after such time has expired unless an immediate need for  
23 such leave still exists.

1           (15) The pool administrator may require the patient's  
2 condition to be recertified by a health care provider on a  
3 monthly basis. If the employee is determined to be able to  
4 return to work sooner than indicated on a previous  
5 certification, the pool administrator may require the unused  
6 portion of a withdrawal to be returned to the pool. If the  
7 employee fails to cooperate with recertification requirements  
8 and reevaluation procedures, the pool administrator may deny the  
9 request or require the unused portion of a withdrawal be  
10 returned to the sick leave pool.

11           (16) Unused sick leave from the pool shall be returned to  
12 the pool when the need for such leave ceases to exist or the  
13 pool administrator requires it in accordance with this  
14 subchapter.

15           (17) The estate of a deceased employee is not entitled to  
16 payment for unused sick leave from the pool.

17           (b) Procedures.

18           (1) The employee shall complete the application for  
19 withdrawal. The human resources officer shall assist the  
20 employee by verifying all paid [~~sick~~] leave balances and the  
21 date and time all paid [~~sick~~] leave was or will be exhausted.

22           (2) The employee shall submit the application and the  
23 health care provider's certification form and a copy of the

1 employee's functional job description to his or her health care  
2 provider no earlier than 15 workdays before the need for the  
3 withdrawal. The health care provider will complete the  
4 certification form and mail it, with the completed application,  
5 directly to the employee's human resources officer.

6 (3) The pool administrator will consider applications for  
7 withdrawal in the order in which they are received and shall  
8 approve or deny the request within five working days of that  
9 date.

10 (4) If the pool administrator questions the validity of  
11 the certification completed by the employee's health care  
12 provider, based on the average expected duration or severity of  
13 the condition, the administrator may request a health care  
14 provider, contracted by the department, to review the patient's  
15 medical records. The contracted health care provider may  
16 consult with the patient's health care provider if more  
17 information is needed. If the determination of the contracted  
18 health care provider differs from the patient's health care  
19 provider, the request may be denied. If necessary, the pool  
20 administrator may request that the patient's medical records be  
21 reviewed by a third health care provider who is not under  
22 contract with the department. The pool administrator and the  
23 employee must agree on the third health care provider. The

1 determination of the third health care provider is binding. The  
2 department will pay for both reviews. If the employee fails to  
3 cooperate with the medical records review, the pool  
4 administrator may deny the request.

5 (5) The pool administrator may require that the unused  
6 portion of the withdrawal be returned to the sick leave pool if  
7 the employee:

8 (A) fails to cooperate with a medical records review;

9 (B) submits false information;

10 (C) remains off work because the employee is not  
11 following the doctor's prescribed treatment; or

12 (D) is abusing sick leave pool hours.

13 (6) The pool administrator will determine the amount of  
14 sick leave transferred for each request based on:

15 (A) the number of hours requested by the employee;

16 (B) the health care provider's certification which  
17 indicates the approximate date the patient will be able to  
18 return to light and normal duties or the amount of time that the  
19 employee is needed to provide primary care for the immediate  
20 family member;

21 (C) the date and time all paid [~~sick~~] leave was or will  
22 be exhausted; and

23 (D) the balance of the pool.

1           (7) The pool administrator shall approve or deny the  
2 transfer of hours from the sick leave pool to the employee's  
3 personal sick leave account.

4           (8) The human resources officer shall inform the pool  
5 administrator of the amount of leave the employee used for the  
6 illness or injury at the end of each month, and, if the employee  
7 has returned to work, the total number of hours used and how  
8 many hours are being returned.

9           (9) The pool administrator shall return all unused hours  
10 to the pool.