

MIDDLE TENNESSEE STATE UNIVERSITY

POLICIES AND PROCEDURES MANUAL

POLICY NO: IV:07:04

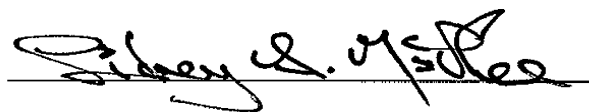
DATE: February 15, 2012

SUPERSEDES POLICY NO: IV:07:04

DATED: August 16, 2010

SUBJECT: Leave Policies

APPROVED: Sidney A. McPhee, President



The following leave policies of the Tennessee Board of Regents are adopted for Middle Tennessee State University and shall apply to all employees as defined below. Exceptions to this policy may be made upon recommendation of the President and approval by the Chancellor.

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**II. DEFINITIONS**

The following definitions shall apply to employee categories as indicated:

- A. Academic personnel (faculty) - All faculty members who hold academic rank, and who are directly engaged in instruction, departmental research, or public service. Academic personnel may be employed either on a nine-month service basis (academic year), compensated over a twelve-month period, hereinafter described as nine-month academic personnel, or on a twelve-month service basis (fiscal year), compensated over a twelve-month period, hereinafter referred to as twelve-month academic personnel.
- B. Executive, administrative, and professional (exempt) - All personnel other than personnel primarily employed in instruction, research, or public service who primarily have executive, administrative, or professional responsibilities, and whose positions require recognized professional

achievement acquired by formal training or equivalent experience. This classification includes all non-academic personnel who are exempt from the provisions of the Federal Wage and Hour Law.

- C. Clerical and support personnel (non-exempt) - All personnel other than academic, administrative or student personnel.
- D. Student employees - All personnel whose primary purpose for being at the institution or school is to be enrolled in an academic program of the institution or school. Student employees are temporary employees.

Each employee is also assigned one of the following designations:

- A. Regular full-time employees - All personnel, executive, administrative and professional, academic personnel, and clerical and support, who are employed on a continuing basis, expected to exceed six (6) months, and who have a regular work week of 37.5 hours or who are scheduled to carry a full teaching load or its equivalent. Regular full-time employees include full-time MODFY (modified fiscal year) employees.
- B. Regular part-time employees - All personnel, executive, administrative and professional, academic personnel, and clerical and support, who are employed on a continuing basis, expected to exceed six (6) months and who have a regular work week of less than 37.5 hours or who are scheduled to carry less than a full teaching load or its equivalent. Regular part-time employees include part-time MODFY (modified fiscal year) employees.
- C. Temporary employees - All personnel whose period of appointment or expected service is less than six (6) months. This definition should not be confused with employees who are designated as probationary employees, who may be regular full-time or part-time employees, and who are entitled to all leave benefits of such employees.
- D. MODFY (modified fiscal year) employees - All regular, full and part-time, non-teaching personnel whose service period is at least nine months, but less than twelve months. The actual length and work schedule can vary at the discretion of the President.

### **III. ANNUAL LEAVE**

It is our policy to provide all regular full-time and part-time employees with regular periods of rest and relaxation away from the work environment and to recognize length of service. The appropriate approving authority may require key administrative employees to take a certain number of consecutive days of annual leave each year.

All personnel entitled to accrue annual leave may request use of annual leave at any time preferred by application to their proper approving authority. Such requests are subject to the discretion of the approving authority, who is responsible for planning the work under his or her control, and should be approved only at such times as the employee can best be spared.

In addition, annual leave may be used to remain in an active pay status by an employee who has exhausted all sick leave and whose continued absence has been approved in accordance with the Sick Leave Policy (see section IV of this policy) and/or Family and Medical Leave Act TBR Policy 5:01:01:14. However,

annual leave may not be used intermittently with leave without pay during a continuous FMLA leave period.

#### A. Eligibility to Accrue Annual Leave

1. Regular full-time employees (excluding nine, ten and eleven month faculty) regardless of probationary status, shall be eligible to accrue annual leave.
2. Regular part-time employees, including twelve month academic personnel (excluding nine, ten and eleven month faculty) scheduled to carry less than a full teaching load or its equivalent, regardless of probationary status, shall be eligible to accrue annual leave on a prorated basis equal to the percentage of their employment to full-time employment.
3. Nine, ten and eleven month academic personnel, full or part-time, whether or not compensated over a twelve-month period, shall not be eligible to accrue annual leave.
4. Temporary employees shall not be eligible to accrue annual leave. Temporary employees who are subsequently appointed as regular employees with no break in service shall become eligible to accrue annual leave and shall receive annual leave balances accrued retroactively from the date of employment. Temporary clerical and support personnel who subsequently become eligible to accrue leave shall also receive retroactive credit for service from the date of employment for purposes of calculating annual leave accrual rates.
5. All full-time and part-time employees who are employed pursuant to funds available to the institution or school through grants or contracts are not eligible to accrue annual leave unless the grant or contract involved provides sufficient funds to cover the costs of such leave, or unless eligibility to accrue annual leave is approved by the President.
6. Student employees shall not be eligible to accrue annual leave.

#### B. Annual Leave Accrual

1. Regular full-time clerical and support personnel (non-exempt) shall accrue annual leave in accordance with the following schedule:

Years of Service	Accrual Rate Per Month	Maximum Annual Accumulation	Maximum Total Accumulation Within FY	Maximum Accumulation Carried Forward to Next FY
0 - 5	7.5 hours	90.0 hours	315.0 hours	225.0 hours
5 - 10	11.3 hours	135.6 hours	405.6 hours	270.0 hours
10 - 20	13.2 hours	158.4 hours	450.9 hours	292.5 hours
20 or more	15.0 hours	180.0 hours	495.0 hours	315.0 hours

2. Executive, administrative and professional personnel (exempt), and twelve-month academic personnel (faculty) who are regular full-time employees, who are exempt from the provisions of the Federal Wage and Hour Law, shall accrue annual leave at the rate of 15 hours per month, with the maximum accumulation of 315 hours to be carried forward to the

next fiscal year.

3. All regular part-time personnel employed on a twelve-month basis and regular part-time personnel on MODFY (modified fiscal year) appointments shall accrue leave on a prorated basis equal to the percentage of their employment compared to full-time employment, with said percentage to be applied to the rate of accrual and maximum accumulation described in items 1 and 2 of this section, as applicable.
4. Eligible employees shall accrue annual leave from the date of employment. (See Section III, item A.4., providing for retroactive credit for temporary employees who subsequently become eligible to accrue annual leave.)
5. Eligible employees earn and accrue annual leave for each month upon completion of a major fraction thereof (i.e., more than fifty percent (50%) of the number of days in the month), and leave may be used when earned, regardless of an employee's probationary status, subject to the discretion of the approving authority.

Annual leave may not be taken before it is earned.

6. Employees otherwise eligible to earn annual leave do not earn or accrue annual leave while on leaves of absence.
7. When an employee who is eligible to accrue annual leave transfers into a nine-month academic position (thus becoming ineligible to accrue annual leave), the employee shall take all of his or her accrued annual leave prior to the date of transfer unless the appropriate approving authority determines that the services of the employee must continue until the date of transfer. In that event, the employee shall be paid for all of his or her accrued annual leave by a lump sum payment at the time of transfer.
8. MODFY employees who are employed during the period which would normally be the non-duty period of their appointment shall accrue annual leave in accordance with items 1 and 2 of this section for each month of full-time employment. For part-time employment during that period, MODFY employees shall accrue annual leave on a prorated basis in accordance with item 3 of this section.
9. Years of Service for Determining Accrual Rate
  - a. Anniversary date for computation of leave shall be the beginning date of employment for each employee, except when adjustments in the date must be made because of periods of non-accrual, i.e., leaves of absence, temporary breaks in employment, etc. The rate of accrual for employees will be effective the month following the anniversary date. Annual leave shall be accounted for and controlled for maximum accumulation purposes on a fiscal year basis.
  - b. In determining the amount of full-time or prorated part-time service accrued by an employee, all service accumulated while employed in any agency, office, or department of the State of Tennessee, or in any state college, university, institute, or technology center shall be credited for purposes of leave computation. In addition, any employee who was employed by a

public school system as defined in T.C.A. section 49-1-103 and who becomes an employee eligible to accrue leave in this System shall receive credit for service with said public school system for leave accrual purposes after employment in this System for one (1) continuous year. In order to be eligible to receive credit for the prior service the employee must begin employment in this System within two (2) years from the date of termination with the public school system.

10. Maximum Accumulation

The accumulation of annual leave shall not exceed the maximum accumulation indicated in items B.1. and B.2. of this section or the proration thereof under item B.3. Annual leave in excess of the maximum may be used during the year in which the excess accrues; in the event it is not so used, it will be transferred to the employee's accumulated sick leave at the close of the fiscal year, unless the employee is on terminal leave, in which case the full amount of accrued annual leave shall be carried forward.

**C. Disposition of Accrued Annual Leave Upon Termination**

1. Except as otherwise provided and subject to the limitations stated in this section, upon termination of employment with the Board of Regents or one of its institutions or technology centers, an employee shall be paid for all accrued but unused annual leave he or she may have as of his or her last working day. Payment shall be by lump sum payment upon separation for reasons other than retirement. Upon retirement payment shall be at the option of the employee, either by terminal leave or by lump sum payment. Whether payment is by terminal leave or lump sum payment, and whether termination is voluntary or involuntary, the discretion to determine the employee's last working day is reserved to the appropriate appointing authority. Of course, the employee retains the right to make his/her last working day a date prior to the date established by the appointing authority. In either option, payment should be made with the employee's normal payroll cycle.
2. (a) Terminal leave is that period during which an employee remains on the payroll beyond his or her last working day until all of his or her accrued annual leave has been exhausted.
- (b) If a retiring employee elects to be paid for his or her accrued but unused annual leave by terminal leave, the date on which his or her annual leave is exhausted shall be the official date of retirement.
- (c) During a period of terminal leave, an employee shall not earn additional annual or sick leave, shall not be eligible to use sick leave, and shall not be eligible for any salary increase. However, an employee shall receive credit for any official holiday occurring during a period of terminal leave and shall receive the longevity bonus if the anniversary date occurs during the period of terminal leave.
- (d) During a period of terminal leave, an employee shall continue to be eligible for group health insurance coverage. Premiums for the

coverage shall be deducted from his or her terminal leave payments if continued coverage is elected.

3. If a terminating employee elects to be paid for his or her accrued but unused annual leave by lump sum payment, the employee's last working day shall be the official date of termination.
4. Payment for accrued annual leave under this section shall not be limited to the maximum accumulation amount which may be carried forward from one fiscal year to the next if the last working day occurs prior to July 1 (even if the terminal leave period extends beyond July 1).
5. In the case of death, payment for an employee's unused accrued annual leave shall be paid to the employee's estate or designated beneficiary.
6. An employee who transfers to another System institution or technology center or another state agency shall not be paid for his or her accrued but unused annual leave. Rather, all unused annual leave shall be transferred to the other institution or technology center or state agency. (In accordance with Section XI. of this policy.)
7. An employee who is dismissed for gross misconduct or who resigns or retires to avoid dismissal for gross misconduct shall not be entitled to any compensation for accrued but unused annual leave at the time of dismissal. (For the definition of gross misconduct, refer to MTSU Policy I:02:01, Section E.5.)

#### **IV. SICK LEAVE**

It is our policy to protect all regular full-time and part-time employees against loss of earnings due to illness, injury, or incapacity to work, including illness or incapacity to work due to pregnancy, and to provide time off to employees in the event of illness or death of certain family members.

##### **A. Eligibility to Accrue Sick Leave**

1. Regular full-time employees and academic personnel, regardless of probationary status, shall be eligible to accrue sick leave.
2. Regular part-time employees, including academic personnel scheduled to carry less than a full teaching load or its equivalent, regardless of probationary status, shall be eligible to accrue sick leave on a prorated basis equal to the percentage of their employment to full-time employment.
3. Temporary employees shall not be eligible to accrue sick leave. Temporary employees who are subsequently appointed as regular employees with no break in service shall become eligible to accrue sick leave and shall receive sick leave balances accrued retroactively from the date of employment.
4. All full-time and part-time employees who are employed pursuant to funds available to the institution through grants or contracts are not eligible to accrue sick leave unless the grant or contract involved provides sufficient funds to cover the costs of such leave, or unless

eligibility to accrue sick leave is approved by the President.

5. Student employees shall not be eligible to accrue sick leave.

**B. Eligibility for and Rate of Accrual of Sick Leave**

1. Regular full-time personnel and full-time academic personnel, whether employed on a twelve-month or nine-month service basis, shall accrue sick leave at the rate of 7.5 hours (one day) for each month of actual service. Under no circumstances may a regular full-time employee earn more than 90 hours (12 days) of sick leave per year.
2. Regular part-time personnel and part-time academic personnel, whether employed on a twelve-month or nine-month service basis shall accrue sick leave on a prorated basis equal to the percentage of their employment compared to full-time employment.
3. Accrued days of sick leave shall be cumulative for all days not used.
4. Eligible employees shall accrue sick leave from the date of employment. (See Section A, item 3, providing for retroactive credit for temporary employees who subsequently become eligible to accrue sick leave.)
5. Eligible employees earn and accrue sick leave for each month upon completion of service for a major fraction thereof.
6. MODFY employees who are employed during the period which would normally be the non-duty period of their appointment shall accrue sick leave at the rate of 7.5 hours for each month of full-time employment. For part-time employment during that period, MODFY employees shall accrue sick leave on a prorated basis in accordance with item 2 of this section.
7. Notwithstanding any other provision herein which might be construed to the contrary, regular nine-month academic personnel shall accrue 67.5 hours (nine days) of sick leave for full-time employment for a full academic year and 22.5 hours (three days) of sick leave for full-time employment throughout summer sessions.
8. Employees otherwise eligible to earn sick leave do not earn or accrue sick leave while on leave of absence.

**C. Use of Sick Leave**

Sick Leave and Family and Medical Leave Act Leave (FMLA) shall run concurrently in accordance with the provisions of TBR Policy 05:01:01:14. (Note: Unless an employee is on a reduced or intermittent work schedule, periods of less than three days shall not be designated as FMLA leave.)

1. Sick leave is generally applicable to absences due to illness or injury to an employee, including illness or incapacity to work due to pregnancy, medical examinations and dental appointments. In addition, sick leave may be used for paternity leave. Refer to section VII. Parental Leave of this policy.

2. Where an employee must be absent because of serious illness in the immediate family, sick leave may be granted by the appropriate approving authority. For purposes of this section, "immediate family" shall be deemed to include: (1) spouse; (2) children, step-children; (3) parents, step-parents, foster parents, and parents-in-law; and (4) siblings; and (5) other members of the family who reside within the home of the employee.
3. In instances of death of a member of the immediate family as defined in Section V, Bereavement Leave, sick leave may be granted at the discretion of the appropriate approving authority for a maximum of 15 hours (2 days) after the three (3) day bereavement leave has been used. In instances of the death of one of the following relatives, sick leave may be granted at the discretion of the appropriate approving authority for a maximum of 22.5 hours (3 days): (1) sons and daughters-in-law; (2) brothers and sisters-in-law; (3) foster brothers and sisters; and (4) other members of the family who reside within the home.
4. Sick leave may not be taken until earned and may not be advanced. Abuse of sick leave by an employee will result in the withholding of payment of the sick leave and possible additional disciplinary action.
5. Sick leave may not be used by nine-month academic personnel for absences due to illness or injury during a summer session unless the employee has been physically present and actually commenced employment for the term in question.
6. Upon prior approval of the Chancellor, an employee who is injured in the line of duty as a result of the commission of an assault upon him or her which disables the employee from performing his or her regular duties, may be retained on the regular payroll for a period not to exceed twenty-eight (28) calendar days without being required to use any accrued sick leave. The length of time for such retention on the payroll shall be based upon a written statement from the attending physician that the employee is unable to perform his or her regular duties.
7. Subject to conditions outlined in Transfer of Sick Leave between Employees, Section XII. Transfer of Sick Leave Between Employees of this policy, sick leave may be transferred to members of the institutions Sick Leave Bank(s).

#### **D. Physician's Statement or Other Certification**

An employee may be required to present evidence in the form of personal affidavits, physician's certificates, or other testimonials in support of the reason for sick leave upon request of his or her supervisor or an appropriate approving authority. Sick leave may not be denied where an employee furnishes an acceptable statement from a licensed physician or accredited Christian Science practitioner, provided that the supervisor or approving authority may require additional documentation or statements from other physicians or accredited practitioners.

#### **E. Return to Work**

For the employee's protection and the protection of those who work closely with the employee, an employee may be required to present a written release to return to work, including any restrictions that may apply, from a licensed physician or other accredited practitioner prior to resuming employment. An employee will be allowed to return to work if he/she is able to perform the essential functions of the position.

**F. Exhaustion of Sick Leave**

When the illness, injury, or disability of an employee continues beyond the period of accumulated sick leave, the employee shall use any accumulated annual leave for continued absence. However, in cases of worker's compensation, an employee may choose to be placed on leave of absence and retain sick and/or annual leave. When an employee has exhausted all accumulated sick and annual leave, he or she may be placed on leave of absence, if requested, and found to be justifiable. (See Section VI. Leave of Absence of this policy.)

**G. Separation of Employees with Accrued Sick Leave**

Upon termination of employment, accumulated sick leave shall not be used as terminal leave, and the employee shall not be entitled to any lump sum payment for accumulated sick leave. If an employee is transferring to another state agency, his or her accumulated sick leave shall be transferred in accordance with Section X. Transfer of Leave, of this policy.

If an employee leaves the System or any other state service in good standing after having worked on a full-time continuous basis for at least one (1) full year and thereafter returns to service with the System on a full-time basis, the employee shall immediately be credited with all sick leave to which he or she was entitled at the time of the previous termination, provided certification of such entitlement is received from the previous employer if other than the new employer; provided further that if the employee has had any interim employment with the System or any other agency of the State of Tennessee for less than one (1) year, he or she shall not be disqualified from receiving credit for sick leave to which he or she is otherwise entitled because of his or her prior employment with the state.

Notwithstanding the above paragraph, if any state employee or teacher employed by a local school board in Tennessee leaves the employment of the state or of that board in good standing and becomes a full-time state employee within six (6) months of the date of termination, the employee shall immediately be credited with all sick leave to which he or she was entitled at the time of the previous termination.

TCRS member employees who terminate due to retirement shall have all unused accumulated sick leave credited toward retirement.

**H. Death of Employees with Accrued Sick Leave**

The estate or designated beneficiary of any employee, upon the employee's death, shall be paid for the employee's unused and accrued sick leave in the same manner as the estates or beneficiaries of deceased employees are paid for annual leave.

#### V. BEREAVEMENT LEAVE

It is the policy of the Tennessee Board of Regents to provide all regular, full-time and part-time employees time off without loss of pay, due to the death of an immediate family member as defined below, consistent with Chapter 1010 of the Public Acts of 1988 and Chapter 51 of the public acts of 1989.

An employee who is absent during his/her regularly scheduled work week due to the death of an immediate family member shall receive payment for reasonable and customary days absent, such days of payment not to exceed three (3) regularly scheduled work days. Immediate family shall be deemed to include 1) spouse; 2) child, step-child; 3) parent, step-parent, foster parent, parent-in-law; 4) sibling(s); and (5) grandparents and grandchildren.

Refer to Sick Leave, Section IV.C.3, for sick leave application to death in family.

Regular part-time employees, including academic personnel scheduled to carry less than a full teaching load or its equivalent, regardless of probationary status, shall be eligible to receive bereavement leave on a prorated basis equal to the percentage of their employment to full-time employment.

#### VI. LEAVE OF ABSENCE

It is our policy to provide approved, unpaid time off to regular employees due to reasons of illness or injury, or disability of an employee who has insufficient accumulated annual and/or sick leave, leave for educational purposes and leave for justifiable personal reasons. [Refer to Section VII. Parental Leave of this policy.] Leave of absence as referred to in this policy shall include any period of administrative leave with pay up to a maximum of 90 days, pending an institutional review or investigation or leave in a non-pay status or athletic competition leave as defined below. Administrative leave with pay must be approved by the President following review by the Office of Human Resources. Leave of absence without pay, not to exceed one (1) year, may be granted for justifiable absences wherein it is not desirable to terminate the employee. Factors to be considered in determining whether it is desirable to not terminate the employee and to approve leave of absence without pay include whether (a) there are extraordinary circumstances present that justify keeping a position open or vacant and preserving it for that employee, (b) it is objectively and from a business standpoint, in the institution's best interest to retain the employee because of demonstrated contributions to the department, and (c) the employee performs a unique service or has unique qualifications that are required for the position. Such leave must be approved by the President or his/her designee, and any additional leave must be approved by the Chancellor upon the recommendation of the President.

Leave of absence shall be granted for any period (which may exceed one (1) year) when an employee transfers to another TBR institution or school or to the Board's central office and requests to be placed on leave of absence.

Employees who request an unpaid leave of absence due to a Family and Medical Leave Act (FMLA) qualifying event shall have their leaves processed in accordance with the provisions of the FMLA TBR Policy 05:01:01:14 regarding eligibility, continuation of insurance coverages, maximum leave period for parents who are both State employees, etc.

If an employee is not eligible for FMLA leave or the period of the leave exceeds the FMLA maximum, the remaining balance of the leave shall be processed in accordance with the provisions of this policy.

In addition, an employee who is on an unpaid leave of absence which does not qualify as FMLA leave shall be responsible for paying both the employee and employer portion of insurance premiums.

While on leave of absence for educational purposes or other justifiable personal reasons other than non qualifying FMLA leave illness, injury, or disability, an employee retains accumulated annual and sick leave, but does not earn or accrue additional annual or sick leave. An employee who has qualified for Workers' Compensation may retain accumulated annual or sick leave. In addition, an employee on leave of absence is not entitled to compensation for official holidays occurring within the leave period.

In addition to the previously defined leave of absence policy, pursuant to Chapter 52 of the Public Acts of 1989, public employees who qualify as members of a United States team for athletic competition, on the world, Pan-American or Olympic level in a sport contest in either Pan-American or Olympic competitions are eligible to request a leave of absence with or without pay for the purpose of preparing for and engaging in the competitions just described. Team is defined as meaning any group leader, coach, official, or athlete who comprises the official delegation of the United States to World, Pan-American, or Olympic competition. In no event shall the total of all such leave exceed the period of the official training camp and competition combined plus a reasonable amount of travel time or 90 calendar days a year whichever is less. The granting of leave under this section shall be discretionary with the public employer. In order to qualify for athletic competition leave, a public employee must: 1) be actively working for the public employer from whom the leave is requested at the time the request is made; 2) request such leave of absence a reasonable period prior to the date the public employee wishes the leave to commence; 3) at the time of the request, the employee shall provide the employer with the actual or anticipated dates of the competition, the dates of the official training camp and specify the total number of leave days that will be necessary in order for the public employee to participate; 4) the public employee must provide satisfactory evidence of qualification and selection for participation.

An employee of the institution who is a member of the United States Air Force Auxiliary Civil Air Patrol who participates in a training program for the civil air patrol, or in emergency and disaster services, shall be entitled to a leave of absence with pay for a period of not more than fifteen (15) days during a calendar year for such purposes if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative. Any leave of absence pursuant to this section shall be in addition to any other leave of the employee. All other rights and benefits of the employee, including seniority rights, insurance benefits, health insurance benefits, creditable service and all other such rights and benefits, shall continue.

The employee may be granted leave pursuant to the provisions of this Act with or without pay subject to the complete discretion of the employer. If leave of absence under this Chapter is granted with pay, the employee retains accumulated annual and sick leave and continues to earn or accrue additional annual and sick leave. The employee is also entitled to compensation for official holidays occurring within the leave period. If the leave is granted without

pay, an employee retains accumulated annual and sick leave, but does not earn or accrue additional annual or sick leave. The employee on leave of absence without pay is not entitled to compensation for official holidays occurring within the leave period. The President must approve the request.

**Procedure:**

1. Leave without pay (LWOP) for periods of one month or less shall be requested on MTSU Request for Leave Without Pay Form, when the employee has no applicable leave accumulation. Requests which have been approved by the appropriate approving authority shall be forwarded to the Human Resource Office for approval by the Human Resources Director, designated by the President as approval authority for periods of one month or less.
2. Leave without pay for periods exceeding one month and any period of LWOP requested when the employee has an applicable leave accumulation shall be requested by memo to his/her immediate supervisor, with approval through channels to the President.
3. Athletic competition leave with or without pay shall be requested by memo to his/her immediate supervisor, with approval through channels to the President.
4. Members of USAF Auxiliary Civil Air Patrol shall be granted leave upon receipt of a request from the employees' wing commander or the wing commander's representative. This request should be submitted through the appropriate approving authority and then forwarded to Human Resource Services.

**VII. PARENTAL LEAVE**

It is our policy to provide a period of up to four (4) months of leave to eligible employees for adoption, pregnancy, childbirth and nursing the infant, where applicable, in accordance with TCA Section 4-21-408. With regard to adoption, the four (4) month period shall begin at the time the employee receives custody of the child.

**A. Eligibility**

Employees who have been employed by the State for at least twelve (12) consecutive months as full-time employees, as determined by the employer at the job site or location, are eligible for this leave. Subsequent references within this policy to an employee shall assume eligibility of that individual.

**B. Relevant Policies**

Upon receipt of a written request for parental leave, the President or his/her designee will process the request in accordance with the provisions of this policy and the employee's eligibility for leave under TBR Family and Medical Leave Policy No. 5:01:01:14. Reference may also need to be made to section III. Annual Leave, IV. Sick Leave and VI. Leave of Absence of this policy.

**C. Notice; Employment Rights and Benefits; Reinstatement**

Employees who give at least three (3) months advance notice to their employer of their anticipated date of departure for such leave, their length of leave, and their intention to return to full-time employment after leave, shall be restored to their previous or similar positions with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave.

Employees who are prevented from giving three (3) months advance notice because of a medical emergency which necessitates that leave begins earlier than originally anticipated shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.

Employees who are prevented from giving three (3) months advance notice because the notice of adoption was received less than three (3) months in advance shall not forfeit their rights and benefits under this policy solely because of their failure to give three (3) months advance notice.

Leave will be granted as paid or unpaid pursuant to the policies of the Tennessee Board of Regents. Such leave shall not affect the employees' right to receive annual leave, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which the employees were eligible at the date of their leave, and any other benefits or rights of their employment incident to the employees' employment position. However, the employer need not provide the cost of any benefits, plans or programs during the period of leave unless such employer so provides for all employees on leaves of absence.

If an employee's job position is so unique that the employer cannot, after reasonable efforts, fill that position temporarily, then the employer shall not be liable for failure to reinstate the employee at the end of the parental leave period.

The purpose of this policy is to provide leave time to employees for adoption, pregnancy, childbirth and nursing the infant, where applicable. Therefore, if the employer finds that the employee has utilized the period of leave to actively pursue other employment opportunities or the employer finds that the employee has worked part time or full time for another employer during the period of leave, the employer shall not be liable for failure to reinstate the employee at the end of such leave.

Whenever the employer shall determine that the employee will not be reinstated at the end of such leave because the employee's position cannot be filled temporarily or because the employee has used such leave to pursue employment opportunities or to work for another employer, the employer shall so notify the employee.

**D. Sick Leave**

Use of accrued sick leave for adoption or childbirth is limited to thirty (30) working days following the birth of a child or placement for adoption unless medical complications arise that fit ordinary rules regarding the use of sick leave.

In the event both parents are state employees, the aggregate amount of sick leave that may be used for childbirth or adoption is limited to thirty (30) working days following the birth of a child or placement for adoption.

In order to be eligible to use sick leave as parental leave, a statement from the attending physician indicating the expected date of delivery must accompany the request for leave. Additional information from the attending physician may be required if there are complications and the period of absence must begin sooner than agreed, extend further than agreed, or require the use of sick leave beyond the period beginning with the period of hospitalization and extending for thirty (30) working days following the birth of a child or placement for adoption.

After the thirty (30) working days following the birth of a child or placement for adoption or, if extended, after employee's physician determines that the employee should be released, thus ending the period of sick leave, the employee may use accrued annual leave or leave without pay for the remainder of the four-month parental leave.

**E. Annual Leave; Compensatory Time**

Accrued annual leave and compensatory time may be used for the entire leave period.

**F. Leave of Absence**

When accrued annual and sick leave balances are depleted prior to the end of the four (4) month parental leave period, the employee will be placed in a leave of absence status. Refer to section VI. Leave of Absence of this policy regarding continuation of insurance coverage for employees on unpaid leave of absence.

**G. Family and Medical Leave**

To be eligible for Family and Medical Leave (FML) which provides for up to twelve (12) work weeks of leave, an employee must have: (1) worked for the State at least twelve (12) months; and, (2) worked a minimum of 1250 hours during the year preceding the start of the leave.

Employees who are eligible for FML will have parental leave processed in conjunction with the provisions of TBR Policy 5:01:01:14 Family and Medical Leave regarding election of paid/unpaid leave, continuation of insurance coverages, etc. Parental leave and FML periods shall run concurrently.

At the end of the FML period, an employee is also entitled to receive the difference between the four months granted under this policy and the twelve (12) workweeks granted under FML. Accrued annual leave or leave of absence may be used for the remainder of the parental leave period.

During work weeks that an employee takes leave designated as FML, the employer is responsible for paying the employer's portion of the employee's insurance premium, whether the leave is paid or unpaid. Employees who choose to take any unpaid leave over the amount to which they are entitled under FML should be made aware that they will be responsible for paying the employer's portion of the insurance premium for the remainder of the leave period if they wish to ensure continued coverage.

### VIII. MILITARY LEAVE

All employees who are members of any reserve component of the armed forces of the United States or of the Tennessee National Guard shall be entitled to a leave of absence from their duties for all periods of military service during which they are engaged in the performance of duty or training in the service of this State, or of the United States, under competent orders as stipulated in U.S.C. Title 38, § 4311-4318 and T.C.A. § 8-33-101 through 8-33-109 and 58-1-106.

An employee or applicant for employment who performs, applies to perform, or has an obligation to serve in a uniformed service shall not, on that basis, be denied employment or reemployment or be discriminated or retaliated against for such service or application for service in any manner.

#### A. Definitions

"Military Duty" means (i) training and service performed by an inductee, enlistee, or reservist or any entrant into a temporary component of the armed forces for the United States; and (ii) time spent in reporting for and returning from such training and service, or if a rejection occurs, from the place of reporting for such training and service. "Military Duty" also includes active duty training as a reservist in the armed forces of the United States or as a member of the national guard of the United States when the call is for training only.

#### B. Military Leave With Pay

1. Each employee who is on military leave shall be paid his or her salary or compensation for a period, or periods, not exceeding twenty (20) working days in any one (1) calendar year.
2. Holidays and scheduled off duty days do not count toward the twenty (20) workdays allowed.
3. During the twenty (20) day period the employee continues to earn regular pay, service credit, and applicable annual and/or sick leave accruals. All other rights and benefits continue to which the employee is otherwise entitled.
4. A regular employee who has exhausted the twenty (20) days of paid leave in any one calendar year may elect to use accrued annual leave. In addition, a regular employee may use accrued sick leave if the employee provides proof to the president or his or her designee that he/she was sick while serving in the armed forces.
5. An employee on terminal leave is entitled to use his/her twenty (20) days of paid military leave with no loss of rights or benefits to which the employee is otherwise entitled.
6. Employees must furnish certification from competent military authority of the dates active duty was actually performed.
7. Longevity credit will not be affected.
8. Employees, are entitled to additional paid leave if called to active duty pursuant to T.C.A. § 58-1-106.

**C. Military Leave With Partial Pay**

1. Military Leave with Partial Pay shall be granted to all employees who are called to active duty by the President of the United States or under the authority of a Governor as members of the Reserve or National Guard as provided by applicable Tennessee Executive Orders.
2. Partial pay shall be the difference between the employee's regular state salary and the employee's fulltime military salary.
3. Affected employees shall remain state employees while on such active duty for the purpose of (a) accruing sick leave, (b) accruing annual leave, (c) accruing longevity pay which shall continue to be paid to the employee annually, and (d) accruing retirement time. Earnable compensation and retirement benefits shall not be increased or decreased by any partial payment made pursuant to this section. The period of absence while on military duty shall count toward the minimum twelve (12) months and 1,250 hours required that an employee work for eligibility for leave under the Family Medical Leave Act.

Current Executive Orders 4, 9, 12, 17, 20, 26 and 40 relating to Military Leave with Partial Pay can be found at:  
[www.state.tn.us/sos/pub/execorders/index](http://www.state.tn.us/sos/pub/execorders/index)

**D. Military Leave Without Pay**

1. Military leave without pay shall be granted to all employees for periods of active duty or training activity with the armed forces of the United States, its reserve components or the Tennessee National Guard for periods beyond the twenty (20) days of paid leave in a calendar year.
2. Military leave without pay shall be granted to employees voluntarily entering the regular components of the Armed Forces of the United States.
3. During a period of unpaid military leave, a regular employee retains all accumulated annual and/or sick leave.
4. Longevity credit will not be affected.

**E. Reemployment Rights**

1. With exceptions noted in the regulations, an employee may perform service in the uniformed services for a cumulative period of up to five (5) years and retain reemployment rights. (20 C.F.R. 1002.99 - 1002.103)
2. An employee leaving for military service must give her/her employer advance notice of his/her intent to leave the employment position for uniformed service unless giving such notice is prevented by military necessity or is otherwise impossible or unreasonable under all the circumstances. The notice may be either verbal or written, may be informal, and does not need to follow any particular format. (20 C.F.R. 1002.85 - 1002.86)

3. An employee leaving for military service cannot be required to decide at that time whether he/she intends to return to that employer but may defer that decision until after completing the period of service. An employee who indicates intent not to seek reemployment following military service may change his/her mind and not forfeit reemployment rights. (20 C.F.R. 1002.88)
4. Reemployment must occur promptly, no later than within two weeks of the employee's application for reemployment.
5. An employee on military leave of absence who is relieved or discharged from military duty under circumstances other than dishonorable shall be entitled to reemployment rights as follows
  - (a) if the employee served less than 31 days, or was absent for a period of any length for the purpose of an examination to determine his or her fitness to perform service, the employee must report back to the employer not later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the period of service, and the expiration of eight (8) hours after a period allowing for safe transportation from the place of that service to the employee's residence. For example, if the employee completes a period of service and travel home, arriving at ten o'clock in the evening, he or she cannot be required to report to the employer until the beginning of the next full regularly-scheduled work period that begins at least eight hours after arriving home, i.e., no earlier than six o'clock the next morning. If it is impossible or unreasonable for the employee to report within such time period through no fault of his or her own, he or she must report to the employer as soon as possible after the expiration of the eight-hour period.
  - (b) if the employee served between 31 and 180 days and makes an oral or written request for reemployment no more than 14 days after completing service.
  - (c) if the employee served more than 180 days and makes an oral or written request for reemployment no more than 90 days after completing service.

Source: Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, amended 1/18/06 (20 C.F.R.1102.115)

6. An injured employee must comply with the notification procedures determined by the length of service, after the time period required for the person's recovery. The recovery period may not exceed two (2) years unless circumstances beyond the person's control make notification within the two-year period impossible or unreasonable. (20 C.F.R. 1002.116)
7. An employee who fails to report or apply for reemployment within the timeframes described above does not automatically forfeit entitlement to reemployment, but will be subject to the System's policy regarding unauthorized absence from work. (20 C.F.R. 1002.117)

8. The president or his/her designee may request that employees applying for reemployment submit documentation to substantiate that:
  - a. the employee's application is timely; and
  - b. the employee's entitlement to reemployment has not been terminated due to dishonorable or bad conduct discharges
  - c. the employee has been fully discharged to return to employment.
9. If the employee fails to provide requested documentation,
  - a. it shall not be a basis for denying reemployment if the documentation does not exist or is not readily available at the time requested by the employer;
  - b. the employer may terminate the employee and any rights or benefits provided under this policy should documentation become available that establishes the employee does not meet one or more of the requirements in Section E,5 above.

#### **F. Reemployment to Position**

- A. An employee who was released under conditions other than dishonorable shall be eligible for reemployment as follows:
  1. As a general rule, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service. This position is known as the escalator position. (20 C.F.R. 1002.191)
  2. Once the escalator position is determined, other factors and elements may have to be considered to determine the appropriate reemployment position. This may include the employee's length of service, qualifications, and disability, if any, as well as seniority, status, and rate of pay that the employee would ordinarily have attained in that position given his or her job history, including prospects for future earnings and advancement. (20 C.F.R. 1002.192-193)
  3. If an opportunity for promotion or eligibility for promotion requiring a skills test was missed, the employee will receive a reasonable amount of time to adjust to the employment position prior to the skills test being administered. (20 C.F.R. 1002,193-193)
  4. The USERRA does not prohibit lawful adverse job consequences that result from the employee's restoration on the seniority ladder. (20 C.F.R. 1002.194)
  5. If the employee's period of service was less than 91 days, the employee is reemployed in the escalator position. If the employee is not qualified for the escalator position, and after reasonable efforts by the employer, remains not qualified, the employee will be employed in the position he or she was employed on the date that the period of service began. If the employee is not qualified to

perform either the escalator position or the pre-service position, after reasonable efforts by the employer, the employee will be reemployed in any other position that is the nearest approximation first to the escalator position, and then to the pre-service position. In all instances, the employee must be qualified to perform the duties of this position and the employer must make reasonable efforts to help the employee become qualified to perform the duties of the position (20 C.F.R. 1002.196)

6. If the employee's period of service was more than 91 days, the employee is reemployed in the escalator position, or a like position. If the employee is not qualified for the escalator position or the like position, and after reasonable efforts by the employer, remains not qualified, the employee will be employed in the position her or she was employed on the date that the period of service began, or a like position. If the employee is not qualified for any of the above referenced positions, the employee will be reemployed in any other position that is the nearest approximation first to the escalator position, and then to the pre-service position. In all instances the employee must be qualified to perform the duties of this position and the employer must make reasonable efforts to help the employee become qualified to perform the duties of the position (20 C.F.R. 1002.197)
7. Efforts required of the employer to help the employee become qualified for the reemployment position(s) must be reasonable. TBR is not required to reemploy an employee upon his or her return from service if he or she cannot qualify for the appropriate reemployment position. If the employee cannot become qualified for the escalator position, the employee must be reemployed in a position of equivalent seniority, status and pay that the employee is qualified to perform or could reasonably become qualified to perform. If no such position exists, the employee must be placed in a job that is similar in terms of seniority, status and pay consistent with the employee's circumstances.
  - a. "Qualified" means that the employee has the ability to perform the essential tasks of the position. The employee's inability to perform one or more non-essential tasks of a position does not make him or her unqualified.
  - b. Whether a task is essential depends on several factors, and these factors include but are not limited to:
    - i. The employer's judgment as to which functions are essential;
    - ii. Written job descriptions developed before the hiring process begins.
    - iii. The amount of time on the job spent performing the function;
    - iv. The consequences of not requiring the individual to perform the function;
    - v. The terms of a collective bargaining agreement;

- vi. The work experience of past incumbents in the job; and/or
- vii. The current work experience of incumbents in similar jobs.

c. Only after the employer makes reasonable efforts, as defined in (20 C.F.R. 1002.5(i)), may it determine that the employee is not qualified for the reemployment position. These reasonable efforts will be made at no cost to the employee. Source: 20 C.F.R. 1002.198

8. Consideration of seniority in reemployment decisions is limited to situations involving reemployment following a period of documented military leave. Although provided for by the state military leave statute, "seniority" is not a factor in employment decisions unrelated to military leave, nor is seniority (apart from longevity) recognized under TBR system or institutional policy.

B. If two or more persons are entitled to reemployment in the same position and more than one of them has reported for reemployment, the person who left the position first shall have right to the position. The remaining employee (or employees) is entitled to be reemployed in a position similar to that in which the employee would have been employed, according to the rules that normally determine a reemployment position, as set out above. (20 C.F.R. 1002.199)

#### **G. Retention Rights**

If the employee's most recent period of service in the uniformed services was more than 30 days, he or she must not be discharged except for cause:

- A. for 180 days after the employee's date of reemployment if his or her most recent period of uniformed service was more than 30 days, but less than 181 days; or
- B. for one (1) year after the date of reemployment if the employee's most recent period of uniformed service was more than 180 days. (20 C.F.R. 1002.247)

#### **H. Continuation of Benefits**

A returning employee is entitled to the same rights and benefits he/she would have had if employment had been continuous.

##### 1. Insurance

a. If elected, medical insurance coverage may be continued during a period of military service for the lesser of:

- (1) 24 months following the beginning of the military leave;
- (2) The period beginning on the date on which the employee's absence begins until the day after the date on which the employee fails to report to work or apply for employment as determined in Section D.1. of this policy; or,

- (3) unless state law or Executive Order provides for greater benefits.
- b. If coverage is continued, the employee will be required to pay premiums as follows:
- (1) 30 or less days of service - employee's portion of the premium only or
  - (2) more than 30 days of service - up to 102%. This includes the employee's and employer's portion of the premium and 2% for administrative cost. (20 C.F.R. 1002.166)
  - (3) if the employee elects to discontinue insurance coverage, a waiting period may not be imposed for reinstatement of coverage upon reemployment if a waiting period would not have been imposed had coverage not been terminated.
  - (4) USERRA allows a health plan to impose an exclusion or waiting period for illnesses or injuries determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during the performance of military duty. (20 C.F.R. 1002.168)
  - (5) continuation of other State insurance plans will be determined by the State Division of Insurance Administration. Continuation of System plans will be in accordance with the provisions of the plan(s).

## 2. Retirement

For retirement purposes, a returning employee is considered as not having a break in service, except as noted in Section E.7. of this policy. Following an employee's return to work, the institution will make retirement contributions which would have been made if employment had been continuous, not to exceed five (5) years.

- a. Contributions shall be made at the rate that would have been made if employment had been continuous.

## 3. Rate of Pay

If the employee is reemployed in the escalator position, the employee must be compensated at the rate of pay associated with the escalator position by taking into account any pay increases, differentials, step increases, merit increases or periodic increases that the employee would have attained with reasonable certainty had he or she remained continuously employed during the period of service. Any pay adjustments must be made effective as of the date it would have occurred had the employee's employment not been interrupted by uniformed service. (20 C.F.R. 1002.236)

## 4. Longevity

During a period of military leave, a regular employee continues to earn service credit for longevity pay. Upon reemployment, and in accordance with the employer's payroll procedures, the employee will receive all longevity pay that would have been paid if employment had been

continuous. (Refer to TBR Longevity Guideline P-120.) However, pursuant to the current Executive Order, payments must continue to be made annually.

#### 5. Leave Accrual

A returning employee will begin to accrue leave at the rate(s) that would have been in effect if employment had been continuous.

### IX. CIVIL LEAVE

Any employee, except for a temporary employee with a contract for less than six (6) months, shall be granted civil leave when, in obedience to a subpoena or direction by proper authority, the employee appears as witness for the Federal government, the State of Tennessee, or a political subdivision of the State, or when it is necessary to attend any court in connection with official duties or serve on a jury in any State or Federal Court.

In accordance with TCA 22-4-108, the employee shall be excused from returning to employment for any scheduled work day that such employee's responsibility for jury duty exceeds three (3) hours during the day for which an excuse is sought. Travel time is not to be included in determining whether or not an employee's actual jury duty service has exceeded three (3) hours.

Upon a juror's request, which must be made prior to each day's service, the person responsible for issuing fee and or compensation statements shall provide the juror's employer a statement that shows the number of hours that the juror spent serving if service has been less than three (3) hours. Employees serving less than three hours on a scheduled work day shall return to work for the remainder of their work day.

However, if an employee summoned for jury duty is working a night shift or is working during hours preceding those in which court is normally held, such employee shall also be excused from his/her employment as provided by this section for the shift immediately preceding his/her first day of service on any lawsuit. After the first day of service, when such person's responsibility for jury duty exceeds three (3) hours during the day then such person shall be excused from his/her next scheduled work period occurring within twenty-four (24) hours of such day of jury service. Any question concerning the application of the provisions of this paragraph to a particular work shift or shifts shall be conclusively resolved by the trial judge of the court to which the employee has been summoned.

The employee shall retain all compensation or fees received as a witness or juror. The employee may be required to provide a statement from the court which includes dates and times of service and any compensation received.

The employee shall also receive his/her regular institutional compensation as follows: Payment for time served on civil leave and time spent traveling to and from court shall be made at the employee's regular rate of pay, except that such compensation shall not exceed the total of the employee's regularly scheduled daily pay. Travel expenses (mileage and parking fees) will not be paid by the institution.

Employees involved in personal litigation, or who serve as witnesses in private litigation, shall be charged with annual leave or leave without pay.

#### **X. TRANSFER OF LEAVE**

Any regular employee of any agency, office or department of the State of Tennessee or of any State college or university who leaves one of these employers for employment with another without a break in service shall have all annual and sick leave transferred. Moreover, if an employee leaves the State University and Community College System institutions/Board of Regents Central Office and is re-employed with a State agency prior to his/her termination date with the State University and Community College System, he/she shall have all unused annual leave transferred/reinstated to the employing agency and shall not be entitled to payment for annual leave beginning with the date of re-employment. Any payment for annual leave upon the termination which is later found to have been in violation of this policy shall be repaid to the State University and Community College System institutions/Central Office by the terminating employee.

When a former employee who has at least one (1) full year of State employment in good standing returns to full-time service with one of these employers, he/she shall be credited immediately with all sick leave to which he/she was entitled at the time of termination. The last employer shall be responsible for certifying eligibility for this sick leave credit to the re-employing agency, college or university.

If any teacher employed by a local school board in Tennessee leaves the employment of that board in good standing, and becomes a full-time state employee within six months of the date of termination, upon certification of accrued and due sick leave by the previous employer, he/she shall immediately be credited with all sick leave to which he or she was entitled at the time of the previous termination.

#### **XI. VOTING LEAVE**

It is the policy of the Tennessee Board of Regents to provide employees time off to vote in state, national, and local elections and to establish a procedure for reporting the time missed from work.

Employees who are registered voters may receive reasonable time off to vote if they request such time off before 12:00 noon the day before the election. The supervisor may specify the hours during which the employee may be absent to vote, and the time off may not exceed three hours. No time off will be granted if the polls in the county where the employee is a resident are open three (3) or more hours before the employee is scheduled to begin work or if the polls close three (3) or more hours after the employee's work schedule ends.

Time off to vote shall be recorded as non-duty pay hours. Time off to vote is recorded for non-exempt employees as non-worked time when calculating overtime.

In accordance with TCA § 2-9-103 any full-time employee appointed by a county election commission to work part-time as a voting machine technician, shall be granted unpaid leave for the day(s) required for the technician's duties. Supporting documentation may be required by the appropriate approving authority for the period of duty.

An employer may not require the employee to use accrued annual leave and/or compensatory time for this period. However, either may be used at the employee's option.

### **XIII. TRANSFER OF SICK LEAVE BETWEEN EMPLOYEES**

In accordance with Chapter 755, Public Acts of 1994, which became effective April 12, 1994, this policy establishes guidelines and procedures for transferring sick leave to members of the Sick Leave Bank who experience a continuing disability due to illness or injury.

#### **A. Eligibility Criteria for Receiving Sick Leave**

In order to receive sick leave donated by another employee, all of the following criteria must be met. The recipient must (1) be a current member of the institution's sick leave bank, (2) have used all accumulated sick leave, annual leave, compensatory time, and made application through the Sick Leave Bank(s) for each separate illness or recurring diagnosed illness or accident, (3) have a continuing disability resulting from personal illness or injury and be unable to work, and (4) not be receiving any other form of compensation including social security disability benefits, TIAA or Hartford long term disability benefits, Division of Claims Administration benefits, or compensation through the State Retirement Plan or Sick Leave Bank.

Before an employee is eligible to receive donated leave, his or her physician must provide current certification that the employee has a disability resulting from personal illness or injury and is unable to work. Upon receipt of such medical certification, the employee is eligible to receive up to 20 days of leave for which he/she would otherwise be without pay, including holidays. Eligibility for additional increments of 20 working days may be based on current medical certification of the continuing disability. The maximum amount that may be transferred to an employee is limited to 90 days for which the employee would otherwise not be paid as stated above. Transfer of sick leave to an employee may not be denied if all eligibility criteria are met.

For regular full-time employees receiving transferred leave, a "day" is defined as 7.5 hours for employees on a 37.5-workweek schedule and 8 hours for employees on a 40-hour workweek schedule. Regular part-time employees shall receive sick leave on a prorated basis equal to the percentage of their employment to full-time employment. Recipients shall continue to accrue leave and service in accordance with the provisions of the appropriate policies and guidelines.

#### **B. Criteria for Donating Leave**

A donating employee is not required to be a member of the Sick Leave Bank. If the institution has both Faculty and Staff Sick Leave Banks, employees may donate to members of both banks of the home institution. No transfers may be made beyond the home institution.

In order to donate sick leave to a member of the Sick Leave Bank, an employee must have a current minimum balance of 20 sick leave days, based on his/her accrual rate. (Example: 20 x 7.5 hours accrual rate = 150.0 hours.) In addition, the donor must agree to donate a minimum of 5 days of

accrued leave. However, in the event the donor's percentage of employment exceeds that of the recipient, the minimum donation will be based on the recipient's accrual rate. Regular part-time employees will donate leave equal to their accrual rate. (Example: 10 x 3.75 hours accrual rate = 37.50.) The maximum amount of sick leave which an employee may donate during his/her employment at the home institution is the equivalent of 90 accrued days.

An employee may donate more than one time to a single individual. However, the employee may not donate more than one-half of his/her leave balance in effect at the time of the initial transfer. For example, an employee with a leave balance of 200 hours may donate 100 hours to a sick leave bank member. If the recipient only used 75 hours during the first occurrence, the donor could only give that same recipient a total of 25 hours at a later date.

### **C. Procedural Guidelines**

In order to facilitate sick leave transfer between employees, the following procedures should be followed:

1. The donating employee (donor) must complete a form (Sick Leave Donation Agreement Form available in the Human Resource Office) stating the name of the recipient and the amount of leave being donated. This form must be signed and witnessed by two employees of the institution. Upon completion, the donor should send the form to the office responsible for processing leave.
2. Following verification that (1) the recipient is a member of the Sick Leave Bank, (2) the donating employee has sufficient sick leave to cover the donation, and (3) the amount does not exceed one-half the donor's current balance, the form will be approved by the appropriate official. A copy of the form will be placed in both the donor and recipient's personnel files, and the original will be retained by the office responsible for processing leave.
3. Donor forms will be date and time stamped in the order received. This will determine the order in which sick leave will be deducted from the donors' sick leave balances where there are multiple donors for a single individual.
4. The recipient's department will be notified of the amount of leave that has been donated.
5. Before the initial transfer of leave is completed, the office processing leave will verify that the recipient has provided current certification from his/her health care provider that he/she continues to be unable to work. A current medical form may be required prior to the transfer of sick leave for every subsequent 20 days of donated leave.
6. At the time of transfer, adjustment forms will be completed by the appropriate office. Prior to deducting leave from a donor, this office will verify that the donor has sufficient leave to cover the amount originally donated and also maintain the required balance. If less than the required amount is available, the leave donation is voided.

7. Payment of the donated leave will be based on the recipient's established rate of pay. However, this rate may be changed due to any pay increases which occur during periods of donated leave.
8. Only the amount of leave which has been projected as necessary to cover each pay period will be transferred at any given time. If an employee has donated 10 days and only 4 days are required for the current pay period, only 4 days will be deducted during this pay period. If the disability continues into the next pay period, the remaining days will be deducted at the appropriate time.
 

NOTE: Sick leave may not be transferred retroactively beyond one pay period. For example, if no one has agreed to donate leave to an employee who has exhausted all of his/her Sick Leave Bank entitlements and has been placed on an approved leave of absence without pay, another employee may later donate sick leave to this employee. Retroactive payment for the value of this leave may not be extended beyond one pay period.
9. Donated sick leave which has not been used by the recipient will be transferred to the Sick Leave Bank.
10. If the donor terminates employment, retires, transfers to another institution or State agency, dies, or has an insufficient leave balance to meet the eligibility criteria, all responsibility to donate this leave is voided.

The decision to donate sick leave to another individual should be a choice made freely by each employee. Any person attempting to unduly influence another employee to donate leave shall be subject to disciplinary action, and any prior agreement made to donate leave under these conditions shall be voided.

#### **XIII. DISASTER RELIEF SERVICE**

In accordance with TCA § 8-50-810, a regular employee who is a certified disaster service volunteer of the American Red Cross may be granted leave with pay for up to fifteen (15) work days each calendar year to participate in specialized disaster relief services for the American Red Cross. The request for the employee's services must come from the American Red Cross and is subject to approval by the employee's supervisor. The institution may require the employee to provide verification of service following the disaster period.

Employees who are currently certified as a disaster relief volunteer must register with the office of Human Resources immediately.

#### **XIV. VOLUNTEER FIREFIGHTER SERVICE LEAVE**

In accordance with TCA § 50-1-309, a regular employee who is an active volunteer firefighter may be permitted to leave work in order to respond to fire calls during such employee's regular hours of employment without loss of pay, vacation time, sick leave, or earned overtime accumulation. Such employee may be permitted to take off the next scheduled work period within twelve (12) hours following such response as an annual leave or sick leave day without loss of pay if the employee assisted in fighting such fire for more than four (4)

hours. If the employee is not entitled to an annual leave or sick leave day then such employee may be permitted to take off such work period without pay.

In addition, any employee who is an active volunteer firefighter and who worked for more than four (4) hours the prior day or night as a volunteer firefighter in an emergency may be permitted to take off the next scheduled work period within twelve (12) hours following such emergency as an annual leave or sick leave day without the loss of pay. If the employee is not entitled to an annual leave or sick leave day then such employee may be permitted to take off such work period without pay.

The employer may require the employee to submit a written statement from the chief of the volunteer fire department verifying that such employee responded to a fire or was on-call and specifying the date, time and duration or such response.

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