

LEAVE SHARING

Application: Full-time and part-time salaried employees in classified and “at will” positions.

PURPOSE

Permits eligible employees in Leave Without Pay (LWOP) status to receive income by using annual leave hours donated to them by other employees.

POLICY SUMMARY

This policy includes the following:

[Administrative Procedures Leave Sharing](#)
[Glossary](#)

AUTHORITY

The Director of the Department of Human Resource Management (DHRM) issues this policy and is responsible for the official interpretation of this policy pursuant to the authority provided [§ 2.2-1201](#) of the Code of Virginia. DHRM reserves the right to revise or revoke this policy as necessary.

Agencies may supplement this policy to accommodate specific business needs. Supplemental policies must be consistent with the provisions of DHRM policy and must be communicated to all agency employees.

RELATED POLICIES

[4.20 - Family and Medical Leave](#)
[4.45 - Leave Without Pay – Conditional/Unconditional](#)
[4.55 - Sick Leave](#)
[4.57 - Virginia Sickness and Disability Program](#)

[6.10 – Personnel Records Management](#)

ADMINISTRATIVE PROCEDURES

LEAVE SHARING

A. Eligibility

- “Traditional” Sick Leave Program
 - a. Employees covered by [Policy 4.55, Sick Leave](#), may request donated annual leave as described in this policy if the employee:
 - (i) Experiences leave without pay due to a personal illness, or injury, or
 - (ii) Experiences leave without pay due to a family member’s illness or injury for which the employee is using Family and Medical Leave per [Policy 4.20 - Family and Medical Leave](#).
- Virginia Sickness and Disability Program
 - a. Employees covered by [Policy 4.57 - Virginia Sickness and Disability Program \(VSDP\)](#), may request donated annual leave as described in this policy if the employee experiences leave without pay due to a family member’s illness or injury for which the employee is using Family and Medical Leave per [Policy 4.20 – Family and Medical Leave](#).

NOTE: Employees who participate in the VSDP receive program benefits for personal injury or illness and, therefore, are not eligible for leave donations for personal reasons. Newly hired and re-hired employees who are required to serve a one year waiting period before accessing VSDP program benefits for personal injury or illness are also not eligible for leave share donations for personal reasons. They are eligible for such donations during the one year waiting period only when using Family and Medical Leave for a family member’s illness or injury.

B. Requests/Approvals

A qualified employee may request donated leave by contacting the agency’s Human Resource Office or following agency procedures. The agency may develop a form for this purpose (See [Recipient Application and Donor Form](#)). Agencies may use this form or develop a form for agency use or prescribe the process by which an employee should request leave sharing. (In the event that an employee is physically or mentally unable to initiate a request, a family member or the agency may do so.)

- To be eligible to receive donated annual leave, the employee must provide the

agency with a physician’s certification of his/her medical condition including the date it began and its probable duration.

- For family illnesses or injuries, normal documentation under FMLA is required (See [Policy 4.20 – FMLA](#)).
- Employees may receive leave share donations only for periods of absence that are covered by personal or family FMLA medical certifications.
- A certification by a second physician of the agency’s choice may be required. However, the agency will bear the cost of a second opinion.
- Any medical documentation must be maintained confidentially and in a location that is separate from the employee’s official personnel file. This information must be destroyed in accordance with the Library of Virginia’s General Records Retention and Disposition Schedules for State Agencies
- An agency may require a waiting period of up to 80 hours of LWOP before permitting leave share payments. If agencies require waiting periods, they must notify employees of this requirement.
- An agency may limit the amount of leave share payments (number of hours) that will be awarded to individual recipients per event, per leave year, or per individual. If agencies limit such leave share payments, they must notify employees of this requirement in advance and apply the limit consistently.

C. Leave Without Pay Status - Compensation, and Benefits

Before being eligible to receive continued pay through the Leave Sharing program, an employee must have exhausted all personal leave balances (annual, traditional sick, VSDP family/personal, compensatory, overtime, and any VSDP personal sick leave that may be used for personal or FMLA family reasons) and be designated in a leave without pay (LWOP) status.

A leave share recipient will not accrue annual leave, traditional sick leave, or VSDP leave credits while receiving pay through leave donations.

1. Leave and Holidays

- a. Leave donations may be used to replace income on holidays.**
- b. An employee’s leave anniversary date is affected by periods of leave without pay. (See [Policy 4.45 - Leave Without Pay – Conditional and Unconditional](#).)**

2. Health Benefits

- a. While an employee is receiving leave share donations for personal illness or injury, the agency will continue to pay its portion of the health care premium for up to 12 months.
- b. While an employee is receiving leave share donations for absences due to FMLA family reasons, the agency will continue to pay its portion of the health care premium for the period covered by FMLA.

3. VRS Contributions

- a. Periods of leave share are not considered creditable compensation for retirement calculations by the Virginia Retirement System (VRS). Therefore, contributions to VRS will be discontinued when an employee is receiving leave share donations.

4. Payroll Deductions

- a. Certain payroll deductions may continue while an employee is receiving leave share donations if the employee receives income replacement sufficient to cover the deductions. Among these are health care premiums and other voluntary deductions.
- b. If the income replacement received through leave share donations is insufficient to cover such deductions, the employee must make arrangements with his or her agency to continue or cancel the deductions.
- c. Employees who are under contract to purchase VRS service credit may not have this deducted from their leave share checks and must make arrangements with VRS to continue their payments.

5. Group Life Insurance

- a. Employees receiving leave share donations continue to be covered under the Commonwealth's group life insurance policy for up to two years.

6. Compensation Adjustments

- a. Employees receiving leave share donations are not eligible for salary increases until they return to a paid status and are no longer receiving leave sharing donations.

D. Procedures for Donations

A donor may authorize donations of accrued annual leave according to the guidelines of the donor's agency in minimum increments of 8 hours by completing a Donor Form and submitting it to the Human Resource Office. (See Recipient Application and [Donor Form](#)). Agencies may use this form or develop a form for agency use.)

Donors do not have to retain any minimum leave balances, nor is there a limit on the number of annual leave hours they may donate.

1. Interagency Donations

- a. An agency may accept annual leave donations from employees of other Executive Branch agencies.
 - b. An inter-agency donation of leave will involve a transfer of leave credits only. Inter-agency donations of leave may occur only if the receiving agency accepts the financial responsibility of continuing the absent employee's salary.
 - c. Agencies should communicate to employees their practice regarding accepting Leave Sharing donations from other agencies.
- 2. Interagency Donations for Family Members**
- a. An agency must accept annual leave donations from employees of other Executive Branch agencies for family members who are eligible to receive leave share donations under this policy.
 - b. Family members under this provision are limited to the employee's:
 - spouse,
 - parents or step-parents,
 - siblings or step-siblings,
 - natural, adopted or step-children.

NOTE: The definition of family members who may donate leave to employees differs from the definition of family members for whom an employee may use FMLA leave.

3. Processing Leave Donations

- a. Agencies should carefully manage the amount of leave donations to ensure that only the amounts truly needed are processed. Agencies should not accept excess donations. Additional donations can be accepted and processed if the need for donations needs to be extended per required documentation.
- b. Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.
- c. If excess leave is donated and processed, it will not be returned to donors.

G. Exclusions

1. For Employees

- a. Medical conditions of the employee will be excluded from eligibility for leave sharing benefits if they result from:
 - (i) any occupational-related accident or illness for the period for which Workers' Compensation (WC) benefits have been awarded or could have been awarded, if the employee had cooperated with WC Program requirements;
 - (ii) intentionally self-inflicted injuries, except as a result of conditions that qualify under ADAAA; or
 - (iii) injuries occurring in the course of violating a law.

2. For Family Members

- a.** Medical conditions of the family member will be excluded from eligibility for leave sharing benefits if they result from:
 - (i) intentionally self-inflicted injuries, except as a result of conditions that qualify under ADAAA; or
 - (ii) injuries occurring in the course of violating a law.

G. Reimbursement Required

- Recipients shall be required to reimburse the agency for pay received for donated annual leave hours when either of the following situations occurs:
 - a.** when an employee receives compensation through the leave sharing program and, subsequently, receives retroactive WC benefits for that same period of time; or
 - b.** when the employee’s agency determines that abuse has occurred.
- If recipients reimburse the agency in situations described above, leave hours will be returned to the original donor(s) according to agency guidelines.

G. Penalties for Abuse

- For purposes of this policy “abuse” is defined as:
 - providing false information on the Recipient Application Form;
 - failure to disclose receipt of a Workers’ Compensation award;
 - other actions knowingly taken by the employee in an attempt to receive leave donations to which he/she otherwise would not be entitled.
- If abuse is verified, the recipient will be required to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay.
- Additionally, the employee may be disciplined in accordance with provisions of [Policy 1.60 - Standards of Conduct](#).

GLOSSARY

Americans With Disabilities Act Amendments Act (ADAAA)

Federal law that prohibits employment discrimination against qualified disabled individuals and requires covered employers to provide reasonable accommodation to those individuals unless that accommodation would impose an “undue hardship” on the employer.

Policy: 4.35 – Leave Sharing

Effective Date: 9/16/93

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Revision Date: 11/25/13

Family and Medical Leave Act (FMLA)

Federal law that provides eligible employees the opportunity to balance the demands of the workplace and their families by providing up to 12 weeks of paid and/or unpaid family or medical leave in a year.

See [Policy 4-20 – FMLA](#)

Virginia Sickness and Disability Program (VSDP)

Provides eligible employees supplemental replacement income during periods of partial or total disability for both non-occupational and occupational disabilities. Administered by the Virginia Retirement System.

See [Policy 4.57 – VSDP](#).

Workers' Compensation (WC) Benefit

Income replacement as awarded by the Workers' Compensation Commission (VWCC) when an employee suffers a compensable work-related injury or illness. Income replacement is awarded by the VWCC and is based upon 66 2/3 percent of the average of the last year's earnings prior to the accident within a minimum and maximum amount as established by the VWCC. See [Policy 4.60 – Worker's Compensation](#).