
TRADITIONAL SICK LEAVE

APPLICATION: Classified employees who have chosen to continue in this program. New employees and re-hires participate in the Virginia Sickness and Disability Program.

PURPOSE This policy permits agencies to provide eligible employees with paid leave from work for reasons related to their own health or that of certain family members, and for family related absences covered by the Family and Medical Leave Act (FMLA).

DEFINITIONS

Abuse of Leave A misrepresentation of the reason for requesting sick leave. It is an abuse of sick leave to claim qualifying reasons for an absence when such reasons do not exist.

Accrual Rate Rate at which employees earn time to use for sick leave. Sick leave accrues at a rate of five work hours per semi-monthly pay period for employees working a 40-hour per week schedule. Classified employees working less than 100% but at least 50% of a 40-hour schedule accrue sick leave proportionate to their percentage of a 40-hour per week schedule. Sick leave can accrue and carry over from year to year without limit.

Classified Employee Term used to identify employees in positions covered by the Virginia Personnel Act. (See Policy 2.20, Types of Employment-Covered Employees.)

Eligible Employee Classified employees hired or re-hired before January 1, 1999, who have chosen to remain in the traditional sick leave program. Employees hired or rehired after that date are not eligible for this program but participate in the Virginia Sickness and Disability Program.

Family Sick Leave Use of accrued personal sick leave hours for the purpose of caring for eligible family members as permitted by this policy (up to 48 hours per leave year).

Leave Year The period January 10 – January 9.

Maximum Payable Amount The amount of accrued sick leave that may be paid to an employee with five or more years of continuous salaried state service when the employee separates from state service or experiences certain other status changes. This amount is 25% of the employee's accrued sick leave balance up to a maximum of

\$5,000.

ACCRUAL OF SICK LEAVE**Timing and Rate of Accrual**

Sick leave accrues at the end of the day on the 9th and the 24th of the month, the end of the pay period. It is credited to the employee and available for use on the first day of the next pay period. An employee must have worked or have been on paid leave for the entire pay period in order to accrue sick leave.

Classified employees in this program who work 40 hours per week (F) will accrue five hours of sick leave per completed semi-monthly period of service (i.e., pay period with no occurrence of leave without pay).

Classified employees in this program who work 20-39.9 hours (50%—99.99% of a 40-hour schedule) per week (Q & P) will accrue sick leave at a rate proportionate to their work schedules.

For example: A classified employee who works 30 hours (75% of a 40-hour schedule) will accrue 3.75 hours of sick leave per completed semi-monthly period of service.

No Maximum Accruals

There is no limit on the amount of sick leave that employees can carry over from one year to the next.

When Sick Leave Does Not Accrue

Sick leave does NOT accrue in the following situations:

- during any semi-monthly pay period when (a) the employee is on leave without pay, including leave sharing, or (b) no work is performed by the employee (e.g., 9-10-11 month employees in their non-working times);
- after 90 consecutive *calendar* days of leave with pay, regardless of the type of leave to which the absence is charged. A return to work for a complete pay period will interrupt the count of 90 consecutive calendar days of leave with pay. A new 90-day period will begin if the employee again returns to a leave with pay status and the employee will continue or resume leave accrual;
- when an employee is suspended with or without pay pending the results of an official investigation or court action **or** during any pay period when an employee is on disciplinary suspension (see Policy 1.60, Standards of Conduct) except that:
 - if a suspension extends into a second pay period, accrual of sick leave shall resume in the second pay period

unless the period of suspension exceeds 15 calendar days;
and

- if a suspension extends into a third pay period, accrual of sick leave shall resume in the third pay period; and
- when an employee is on Leave Without Pay-Layoff or Temporary Work Force Reduction non-working status.

USE OF SICK LEAVE**Personal**

Accrued sick leave hours are available for three major purposes.

Employees shall be allowed to use their accrued sick leave to take paid time off from work for the following reasons:

- medical necessity during the employee's temporary incapacity due to illness or injury, including incapacity related to pregnancy or childbirth;
- infection with or exposure to a contagious disease such that his or her presence on the job might jeopardize the health of others; and
- the employee's medical appointments that cannot reasonably be scheduled during non-work hours.

Family

Employees shall be allowed to use accrued sick leave to take time off from work for the illness or death of an immediate family member. Immediate family members shall include the following:

- parents, including step-parents or persons who stood in place of the parent and performed parental duties and responsibilities;
- spouse as defined *in accordance with Executive Order #30, Marriage Equality in the Commonwealth of Virginia; Policy amended eff. 10/7/14.*
- children, including step-children, foster children, and legal wards;
- siblings, including step-siblings; and
- any relatives, either by blood or marriage, living in the employee's household.

The maximum amount of family sick leave an employee may use for minor or brief periods of disability, or following the death of certain family members, is limited to 48 total work hours in a leave year.

**Family & Medical
Leave (FMLA)**

Employees may use up to 33% of their available sick leave balances for family illnesses/injuries that qualify under the Family and Medical Leave Act (FMLA—29 CFR §825) and for which the leave has been designated as FMLA leave (see Policy 4.20, Family Medical Leave). The calculation of 33% is made at the beginning of the FMLA leave. Employees are permitted to use 33% of their sick leave balances to cover FMLA absences for the following reasons:

- the birth of the employee's child, and to care for the newborn child within 12 months of the birth.
- the placement of a child with the employee for adoption or foster care, and to care for the newly placed child within 12 months of the placement;
- to care for a child under 18 years of age, or a dependent son or daughter over 18 years of age who is incapable of self-care because of mental or physical disability; or
- to care for the employee's spouse or parent with a serious health condition.

NOTE: FMLA leave may run concurrently with sick leave or family sick leave if the employee is FMLA eligible and the condition meets FMLA guidelines. Agencies should designate leave as FMLA when these criteria are met. See Policy 4.20, Family and Medical Leave.

**Workers'
Compensation**

Employees with an approved Workers' Compensation claim will receive the Workers' Compensation benefit (66 2/3% of average weekly wage) and their agency supplement for a period of 92 calendar days. When the agency supplement ends, employees may use accrued sick leave or other accrued leave to supplement the Workers' Compensation benefit to receive 100% pay. See Policy 4.60, Workers' Compensation.

**Extended Period of
Sick Leave**

There are options available to an agency if an employee becomes mentally or physically incapable of performing his or her job, and has been determined to be permanently disabled by the treating physician. An agency should determine if there is any reasonable accommodation, including transfer or demotion to another position, that will enable the employee to perform the job. If not, the agency may require the employee to apply for disability or early retirement.

If an employee declines disability or early retirement, his or her agency may apply Policy 1.60, Standards of Conduct, to address

unsatisfactory performance. (Policy 1.70, Termination and Separation From State Service)

**VERIFICATION OF
EMPLOYEE'S NEED
FOR SICK LEAVE**

An agency may develop internal policies to meet its own needs for verification of employees' sick leave. Such policies should be reasonable, suited to the agency's business needs, and consistent with the general guidance provided herein.

**Employer's Right to
Require Verification**

An employee who wishes to use sick leave must comply with management's request for verification of the appropriateness of using sick leave.

An employee's use of paid sick leave may be denied if the employee fails to comply with a reasonable management request for verification of the need for sick leave, or if the verification provided is inadequate.

Schedule Adjusting

An employee taking approved sick leave may be asked to work additional hours on his or her day off. With the approval of the employee, the agency can substitute the additional hours worked for the sick leave hours, thus reducing or eliminating the need to use the employee's sick leave.

The intent of this provision is to give mutually beneficial flexibility to employee and agency. It is not intended that employees be prevented from appropriate use of sick leave.

**When Verification
May Be Required**

An employee who anticipates being disabled from work due to a medical condition, including but not limited to such things as elective surgery, pregnancy, and childbirth, should submit a physician's certification of disability as far in advance as possible to assist management in planning for the employee's absence. For leave under the Family and Medical Leave Act (FMLA), 30 days notice is required for events that are foreseeable, such as birth, adoption, or planned medical treatment.

For an employee to request or continue to use sick leave due to temporary disability, the employee may be required to submit a physician's certification of disability.

If the employee's sick leave is designated as Family and Medical Leave under FMLA, documentation from the treating physician of the employee or family member, as appropriate, may be required. Normally, documentation sufficient under FMLA will meet the agency's needs for verifying the employee's use of sick leave.

Acceptable Forms of Verification

Forms of verification employees may provide include:

- certification from the treating physician that the employee is temporarily disabled from work. This should indicate the extent of the employee's disability and the anticipated duration of the disability. The agency may send a copy of the Employee Work Plan for the physician to use in determining which duties the employee is able to perform.
- certification from the employee's physician that the employee currently has or has been exposed to a contagious disease such that his or her presence on the job might endanger the health of others; or
- evidence that the employee has a medical appointment that could not reasonably have been scheduled during the employee's non-work hours.

Certification or verification of incapacity for family members or of FMLA-qualifying conditions must meet the requirements for family sick leave or FMLA, as applicable.

Abuse of Sick Leave

Employees who misrepresent the need to use sick leave are subject to disciplinary action under Standards of Conduct, Policy 1.60.

TREATMENT OF SICK LEAVE UPON CHANGE OF STATUS**Payment for Sick Leave Balance - General**

Employees with five or more years of continuous salaried state service may be eligible to receive payment for 25% of their unused sick leave balances up to a maximum payment amount of \$5,000 in situations defined below. Employees with less than five years of continuous salaried state service do not receive payment for any part of their accrued sick leave.

Transferring from One Classified Position to Another

The traditional sick leave balance transfers when the employee moves from one classified position to another classified position. The sick leave balance may not be paid off at that time.

Moving from Classified to "At-Will" or Non-Classified Position

Normally, the agency will pay an eligible employee for the maximum payable amount of accrued sick leave balance when the employee transfers from a classified position to an "at-will" or non-classified position.

Moving from Non-Classified to Classified Position

An employee entering a classified position from a non-classified position may not transfer any accrued sick leave unless

- the employee chose to stay in the Traditional Sick Leave program during the VSDP enrollment periods of 1999 and 2002, and
- the employee has been accruing sick leave at the same or lower rate as a classified employee in the Traditional Sick Leave program, and
- the receiving agency elects to accept all or part of the accrued sick leave.

Changing Retirement Plans

This status added as policy amendment eff. 6-25-14

Eligible employees who elect to transition from the Virginia Retirement System Plan 1 to the Hybrid Retirement Plan may no longer participate in the traditional sick leave program. They must enter the Virginia Sickness and Disability Program.

For employees entering the Hybrid Retirement Plan on July 1, 2014, traditional sick leave accruals shall end as of June 24, 2014, and VSDP leave (family/personal and sick leave) shall be allocated on June 25, 2014 based on service time as defined for current employees.

Eligible employees may elect one of two options for their traditional sick leave balances. They may:

- 1) be paid for the maximum payable amount of unused, accrued sick leave (*see Payment for Sick Leave Balance - General, above*) **OR**
- 2) retain their unused, accrued sick leave balance intact to be payable (*subject to the limits in Payment for Sick Leave Balance – General, above*) upon their separation from state service or other qualifying status change.
 - Should this option be selected, the balance shall be banked and inaccessible for use during the remainder of the employee's state service.

Traditional sick leave may **not** be converted into disability credits.

Upon separation from state service, all or part of the payout received by classified employees for unused sick leave may be used to purchase retirement service credit. Employees should contact the Virginia Retirement System for detailed eligibility and procedure information.

Reducing Work Hours

Current leave balances will be retained when an employee reduces work hours and retains classified status.

Leaving State Service

Eligible employees will be paid for the maximum payable amount of accrued sick leave (see Payment for Sick Leave Balance - General, above) when separating from state service by resignation (including resignation from layoff status), retirement, termination, or death.

Payment at an eligible employee's death shall be made to the Administrator or Executor of the employee's estate. If there is no Administrator or Executor, payment shall be made in accordance with Va. Code § 64.1-123.

All or part of the payout received by classified employees for unused sick leave may be used to purchase retirement service credit. Employees should contact the Virginia Retirement System for detailed eligibility and procedure information.

Rescinding Resignation

The agency may choose to accept an employee's request to rescind his or her resignation within 30 calendar days of separation. If the agency accepts the request to rescind the resignation the PMIS transaction should be changed to reflect a leave without pay for the period of separation; thus the employee will not experience a break in service. Upon agency approval an employee may use appropriate accrued leave to cover the absence.

If the employee received payment for sick leave, he or she may recover the accrued balance (25% paid out and 75% lost at separation) by reimbursing the agency the amount of payment received at separation. Balances will not be restored until full payment has been made. (Partial buy back is not permitted.)

Returning to State Employment

When an employee who was in the Traditional Sick Leave program returns to state employment after a break in service, he or she will be treated as a re-hire. This employee will be enrolled in the Virginia Sickness and Disability Program and will not have the option to return to Traditional Sick Leave

Reinstatement After a Grievance

When an employee in the Traditional Sick Leave program has been reinstated to state service as a result of a grievance determination, the employee may have his or her sick leave balance restored by re-paying the amount the agency paid him or her for sick leave.

- Balances will not be restored until the full payment has been made.

- If the employee is awarded reinstatement back to the date of termination or suspension, the employee will receive any sick leave accruals he or she may have received during that time period and the timeframe will not result in a break in service.

Military Leave

An employee with less than five years of continuous salaried state service at the start of military leave without pay retains his or her sick leave balance, which will be reactivated upon return to state service.

An employee with five or more years of continuous salaried state service at the start of military leave without pay may retain the entire sick leave balance (to be reactivated upon return to state service), or may be paid for 25% of the accrued balance up to \$5,000. If the employee chooses the payment option, the remaining 75% of the balance lapses and may not be restored upon the employee's reinstatement to state service.

An employee who returns from military leave to state service within 180 days may buy back any sick leave for which he was paid by reimbursing the full amount received to the paying agency. The remaining 75% that could not be paid will be restored when the purchase is complete.

An employee does not accrue sick leave while on military Leave Without Pay status, but time on military leave is counted towards the five-year period for payment of sick leave. See Policy 4.50, Military Leave.

Layoff

An employee with less than five years of continuous state service retains his or her sick leave balance during Leave Without Pay-Layoff. If the employee is placed in another classified position during the layoff period, the sick leave balance is restored or transferred.

An employee with less than five years of continuous state service may not receive payment for his or her accrued sick leave.

An employee on Leave Without Pay-Layoff status with five or more years of continuous state service may retain his or her sick leave balance or may elect to receive payment of 25% of the balance up to \$5,000.

If an eligible employee chooses to retain his or her sick leave balance during Leave Without Pay-Layoff, the accrued balance is restored or transferred when the employee accepts another classified state position. If the employee does not accept another salaried state position, payment for sick leave (25% up to \$5,000) will be made at the expiration of the layoff period,

retirement, or resignation, whichever occurs first.

If the employee chooses to receive payment for sick leave while on LWOP-Layoff and within 180 calendar days of receipt of payment accepts another classified position prior to separation-layoff, he or she remains in the traditional sick leave program and may purchase the paid-out sick leave balance by returning the full payment amount received to the agency that made the payment.

Sick leave is not accrued during Leave Without Pay-Layoff status. However, the period of layoff (up to 12 months) counts toward the five years of service required for the employee to receive payment of accrued sick leave balances when separating from state service. (See Policy 1.30, Layoff.)

Other Instances of Retaining Sick Leave

An employee retains his or her accrued sick leave and may NOT receive a lump sum payment when placed on the following leave types:

- educational leave with full or partial pay;
- other conditional or unconditional Leave Without Pay.

Leave as Financial Obligation of the State

Payment for leave of absence is an expenditure of Commonwealth funds. Therefore, records related to employee leaves of absence are subject to audit by the Auditor of Public Accounts, the State Internal Auditor, and the agency's internal auditor

Sick Leave Records

Agencies must maintain accurate and up-to-date leave records in sufficient detail that they can be evaluated during an audit by appropriate officials.

Reporting Absences

Agencies should record in PMIS paid and unpaid leaves of absence that are greater than 14 calendar days. Use PSE003 to record absences.

AUTHORITY

The Department of Human Resource Management issues this policy pursuant to the authority provided in Title 2.2 of the Code of Virginia.

TRADITIONAL SICK LEAVE

POLICY NO.: 4.55
EFFT. DATE: 09/16/93
REV. DATE: 07/10/04
Amended 6/25/14 & 10/7/14

INTERPRETATION

The Director of the Department of Human Resource Management is responsible for official interpretation of this policy, in accordance with Va. Code § 2.2-1201.

Questions regarding the application of this policy should be directed to the Department of Human Resource Management's Agency Human Resource Services.

The Department of Human Resource Management reserves the right to revise or eliminate this policy at any time.

**RELATED
POLICIES**

Policy 1.30, Layoff
Policy 1.60, Standards of Conduct
Policy 1.65, Temporary Work Force Reduction
Policy 1.70, Termination/Separation from State Service
Policy 4.20, Family and Medical Leave
Policy 4.50, Military Leave
Policy 4.57, Virginia Sickness and Disability Program
Policy 4.60, Workers' Compensation
