


# Understanding and Managing Leave

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What is your biggest  
issue or concern  
about coordinating  
leave and workers'  
comp?

# Leave and Workers' Compensation Benefits

# Role of policy and regulations

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## Legal Policy

Compiles federal law, state law, and court decisions and provides the statutory context for local policy. Legal policies are for reference and are not adopted by the local board of trustees.

## Local Policy

Documents board decisions required to implement laws and regulations. Local policy is adopted by the local board.

## Regulations

Administrative procedures to implement policy.

# Regulations and procedures

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- Local and state sick and personal leave
- FML administration
- Leave for police officer illness or injury
- Mental health for peace officers and police dispatchers
- Quarantine leave for peace officers

# Leave applicable to workers' comp absences

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## Paid

- Personal/sick leave
- Extended leave (reduced rate)
- Sick leave bank/pool
- Assault leave
- Police officer illness or injury
- Mental health leave for peace officers and dispatchers
- Quarantine leave (peace officers)

## Unpaid

- Family and medical leave
- Temporary disability leave

# FML and workers' comp absence

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- Any WC absence that is more than three days qualifies as FML
- Determine employee's eligibility
- Provide required FML notices

**Neither the employee nor the employer can delay or refuse to designate an absence as FML**

# Offsetting

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- Offsetting versus non-offsetting
- Documented in local policy
- Importance of aligning of policy and procedure
- Determining district policy choice regarding offsetting
- Impact of offsetting on WC benefits



# Offsetting

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- Leave is used in partial increments
- TIBS and leave = 100 percent of pre-injury wage
- Requires ongoing individual calculations

# Non-offsetting

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- Leave is used in full-day increments
- TIBS are postponed during leave
- No leave election = TIBS only

# Documenting leave election

## Sample Form to Elect Leave Benefits with Workers' Compensation (No Offset)

Name \_\_\_\_\_ Employee number \_\_\_\_\_

Position \_\_\_\_\_ Department/Campus \_\_\_\_\_

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## Sample Form to Elect Leave benefits with Workers' Compensation (Offset)

Name \_\_\_\_\_ Employee number \_\_\_\_\_

Position \_\_\_\_\_ Department/Campus \_\_\_\_\_

This employee is absent from duty because of a job-related illness or injury beginning on (date of first absence attributable to illness or injury). If eligible, workers' compensation insurance may begin paying a percentage of the employee's current wages on the eighth day of absence from duty if an extended absence is required.




# Key take aways

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- Become familiar with leave provided by policy
- Build relationship with leave specialist to ensure coordination of leave occurs
- Discuss applicability of leave with employee
- Document employee's leave election

# Assault Leave



What is your  
biggest challenge  
with assault  
leave?

# Assault leave requirements

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- Texas Education Code § 22.003(b)
- Applicability
  - Doesn't apply to ESC or higher education employees

# Benefits provided

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Up to two years of paid leave

Job protection

Payment of district contribution to health insurance premium



# Qualifiers

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## ■ Physical injury

- Psychological conditions are not covered

## ■ Medical certification required

- Job can't be done because of the injury,
- Returning to work would worsen an injury, or
- Additional days would facilitate the healing process

# Return to work required

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- Able to perform job while complying with restrictions
- Returning would not worsen the injury
- Additional days would not facilitate the healing process

# Assault

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- Defined by Texas Penal Code § 22.01(a)
- Does not require intent to injure
- May include reckless behavior
  - Consult your attorney!

# Assignment to assault leave

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**Request**

**Assign**

**Investigate**

**Determine**

# Duration

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- Maximum of two years after the *day* of injury
- Ceases upon return to work
- Isn't intermittent or reduced schedule
- May apply if treatment or diagnosis is delayed

# Assault leave triggers

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- Employee request
- District knowledge of incident

# Identify investigator

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- HR and other administrator
- Campus principal
- School resource officer
- Local attorney

# Collect relevant information

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- Injured employee statement
- Witness statements
- Video surveillance



# Considerations

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- Nature of the injury or illness
- When and where the injury occurred
- Whether action was an assault

# Document findings

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- Employee statement
- Document interviews
- Written analysis of evidence collected
- Summary of findings

# Determination

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- Assault occurred
- Injury requires recuperation

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graph LR; A[Approve assault leave] --> B[Coordinate with workers' comp]
```

**Approve assault  
leave**

**Coordinate with  
workers' comp**

# Determination

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- Assault occurred
- Injury does not require recuperation

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graph LR; A[Deny assault leave] --> B[Change status to paid or unpaid leave]; B --> C[Determine workers' comp liability];
```

Deny assault  
leave

Change status  
to paid or  
unpaid leave

Determine  
workers' comp  
liability

# Determination

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- No assault
- Injury requires treatment and/or absence

```
graph LR; A[Deny assault leave] --> B[Process as workers' comp injury/absence]
```

Deny assault  
leave

Process as  
workers' comp  
injury/absence

# Communication and tracking

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- Coordinate with other leave benefits
- Communicate with workers' comp specialist, campus/department, and payroll
- Review periodic medical certification

# TIBS coordination

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- TEC § 22.003(b) requirement
- TIBS supplement
- Combined total equivalent to pre-injury weekly wage

# Determining payment

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- Regular weekly wage—employer determines
- Average weekly wage—adjuster determines



# Regular weekly wage

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Daily rate of pay  
 $\times$

Regular workdays/week

# Regular weekly wage

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$$\$260 \times 5 = \$1,300$$

# Average weekly wage

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- Based on reported *earnings* reported on the wage statement (DWC 3SD)
- Computed by the claims adjuster

# Assault leave calculation

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Daily rate of pay - TIBS paid =  
assault leave payment due

$$\$1,300 - \$938 = \$362$$

# Appeals Panel Decision (APD) 061713-S

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- Assault leave is *not* post-injury earnings (PIE)
- Assault leave is offset after TIBS
- TIBS must be paid!
- Overpayment can't be recouped

# Assault leave obligation

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- Assault leave may apply even if TIBS are not being paid.
  - Employee reaches Maximum Medical Improvement (MMI)

# When TIBS are done

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- Employee reaches maximum medical improvement (MMI) but not released to work
- District must continue assault leave at full regular rate of pay up to max 2 years

# Coordination with other leave

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- Family and medical leave
  - Provide required notice
  - DWC 73 may serve as medical certification
- Temporary disability leave



# Required employer notices

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- Employee handbook
- Leave request forms
- Automated systems



# Key take aways

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- Work with HR and Payroll to identify assault leave designation
- Coordinate assault leave payments with Payroll
- Report assault leave payments to WC carrier

# Peace Officer Leave

# Leave for peace officers and telecommunicators

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- Applies to employees of colleges and school districts
  - Peace officers
  - Firefighters
  - Emergency medical technicians
  - Licensed telecommunicators (police dispatchers)
- Paid leave in addition to other leaves

# Mental health leave

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Paid leave for **peace officers** and **licensed telecommunicators** who experience a traumatic event in the scope of employment

# Mental health leave regulations

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- Define traumatic event
- State the number of days available (5 days)
- Process for requesting
- Detail amount of anonymity provided
- Coordinate with workers' comp
- Provide list of available local resources (optional)

# Quarantine leave for peace officers

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- Requires order to isolate or quarantine because of a possible or known exposure to communicable disease while on duty
- Paid leave
- Reimbursement for cost of quarantine
  - Lodging, medical treatment, and transportation

# Paid leave for illness or injury

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- House Bill 471 effective 6/12/2023
- Illness or injury related to person's line of duty
- Full-time police officers and emergency medical service personnel
  - Regularly serves in professional law enforcement capacity
  - Includes chief of the department



# Paid leave for illness or injury

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- Up to one year of full pay required
- District *may* extend at full or reduced pay
  - If reduced pay, employee may use accumulated paid leave
- Light-duty assignment while recovering (at least one year)
- Reinstatement at same rank with same seniority



# Key take aways

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- Review written regulations
- Coordinate partial leave payments with Payroll



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