

	<b>Montana Operations Manual</b>  <b>Policy</b>	Category	<b>Human Resources/ Employee Benefits</b>
		Effective Date	<b>07/09/2010</b>
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Issuing Authority	<b>Department of Administration State Human Resources Division</b>		
<b>Sick Leave Policy</b>			

### I. Purpose

This policy establishes uniform procedures for managing employee sick leave in Montana state government in accordance with [2-18-618](#), Montana Code Annotated (MCA).

### II. Scope

This policy covers Montana's executive branch employees, except those employed by the Montana State Fund, the Montana university system, as well as student interns, short-term workers, elected officials, the personal appointed staff of elected officials, and other employees exempt from policy under [2-18-103](#), [-104](#), and [2-18-601\(6\)](#), MCA.

Any collective bargaining agreement providing greater sick leave benefits supersedes this policy.

### III. Procedures:

Sick leave is granted to employees to provide a paid leave of absence for:

- time off when an employee is unable to perform job duties because of physical or mental illness, injury, or disability;
- maternity-related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;
- parental leave as provided in [2-18-606](#), MCA;
- quarantine resulting from exposure to contagious disease;
- consultation, examination, or treatment by a licensed health care provider;
- short-term attendance to an immediate family member or, at an agency's discretion, another relative because of physical or mental illness, injury, disability, examination, or treatment until other care can reasonably be obtained;
- necessary care of a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; and

- death or funeral attendance of an immediate family member or, at an agency's discretion, another person.

Sick leave is paid at the employee's regular rate of pay at the time leave is taken. Sick leave must be used in half-hour increments.

This policy does not guarantee approval of sick leave. Agency management must approve or deny sick leave requests in accordance with this policy.

### **A. Eligibility**

1. All permanent, seasonal, and temporary employees are eligible to earn sick leave. Accrual of leave credits begins on the first day of employment.
2. Employees must complete a waiting period of 90 calendar days of continuous employment to be eligible to use sick leave or to receive cash compensation for sick leave credits upon termination. In the event of a break in service, an employee must complete a new waiting period.
3. For seasonal employees, time worked in consecutive seasons may count as continuous employment and be applied towards the 90-calendar-day waiting period. For the time to be counted, the seasonal employee must report for work on the date and time specified by the employing agency when operations resume the following season. Failure to report will result in a break in service.
4. Time spent on an approved leave of absence of 16 working days or longer does not count towards the 90-calendar-day waiting period. However, an approved absence of 15 working days or less does count towards the 90-calendar-day waiting period.
5. In either case, an approved leave of absence is not a break in service. All hours worked prior to the approved leave of absence count towards the waiting period, and the employee will not lose any previously accrued leave credits.

### **B. Accrual**

1. Sick leave accrual is calculated and credited at the end of each bi-weekly pay period. It is based on the number of hours paid at the regular rate in a pay status. Sick leave credits may not be advanced or taken retroactively.
2. No limit exists for the number of sick-leave hours an employee may accrue.

3. Eligible employees accrue sick leave at a rate of .046125 hours for each hour in a pay status excluding overtime. Sick leave does not accrue on overtime worked, and no employee shall earn more than the statutory full-time accrual rate of 12 days per year. Employees in a leave-without-pay status do not accrue sick leave ([2-18-618](#), MCA).
4. Employees who work in two or more positions in the same agency or in different agencies shall accrue sick leave based on time worked in each position. Leave time shall be approved and used for the position in which the credits were earned, unless the paying agency approves the use of sick leave accrued from the other position. At no time shall an employee earn more than the maximum accrual for a full-time employee even when the combined time worked exceeds 40 hours in a workweek.

### **C. Sick-Leave Requests**

1. Agency management may establish procedures for the request and approval of sick leave in compliance with this policy. Sick-leave requests should be documented and should contain sufficient detail so that improper use of sick leave can be discovered and corrected.
2. Agency management may deny sick-leave requests if they result in the accrual of compensatory time or overtime.
3. At management's discretion, absences improperly charged to sick leave may be corrected by charging the absence to another qualifying leave, provided the reason for the absence qualifies under the corresponding leave policy.

### **D. Medical Certification**

1. Agency management may require medical certification to confirm the appropriate use of sick leave, including the need to care for an ill or injured immediate family member. A licensed physician, or another licensed health care provider competent to treat and diagnose the particular illness or condition, must provide medical certification. All required medical certifications or examinations must be job-related and consistent with business necessity.
2. When the reason for leave also qualifies for the use of Maternity Leave, parental leave, or Family Medical Leave (FMLA), agency management and the employee must follow the medical certification procedures and other requirements of the Maternity Leave Policy or Parental Leave Policy, the FMLA Policy, and the FMLA regulations (29 CFR 825).

3. Provisions of the FMLA, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act (GINA) place limitations on the nature of the information that may be obtained when medical certification is requested. The certification may request information regarding need for the leave, length of the leave, and the timing of the leave. Seeking more information than necessary to verify the need for leave may violate provisions of the FMLA, ADA, or GINA.
4. To comply with The Genetic Information Nondiscrimination Act of 2008 (GINA), employees should not provide any genetic information when requesting the use of sick leave or responding to a request for medical certification.
5. Agency managers should not ask employees probing questions about the sick-leave qualifying event that may elicit genetic information about an employee or an employee's family members. See the Non-Discrimination EEO Policy ([2.21.4001](#) et seq., ARM) and the [Family and Medical Leave Policy](#) for further guidance.
6. Agency managers must include the safe-harbor language required by the GINA regulations on all certification requests. This language should also be included in any document addressed to a medical professional or the employee when any type of medical information is requested or may be disclosed.
7. Agency management may also require an employee to be examined by a licensed physician or another licensed health care provider of the agency's choice. Agency management must pay the costs of such an examination.
8. All medical information obtained through certification or medical examinations must be:
  - a. maintained as confidential in secured, separate files from the usual personnel files, and
  - b. maintained according to ADA and GINA confidentiality requirements.
9. See the [Family and Medical Leave Policy](#), Non-Discrimination EEO Policy (ARM [2.21.40](#)), and Employee Records Management Policy (ARM [2.21.6605 through 2.21.6606, 2.21.6608, 2.21.6611 and 2.21.6622](#)) for additional information on obtaining and storing employee medical information.

## **E. Holidays**

Employees who take sick leave overlapping an observed state holiday will receive holiday benefits up to eight hours. An employee who is absent for qualifying sick leave reasons may request to use sick leave to cover regularly scheduled work hours exceeding the eight-hour holiday benefit. Agency management may deny this request if it results in the accrual of compensatory time or overtime.

#### **F. Using Sick Leave During Approved Annual Leave Absence**

An employee taking approved annual vacation leave must be allowed to substitute accrued sick leave for annual leave if circumstances arise qualifying for the use of sick leave. The employee must make the request to substitute sick leave for annual leave within five business days of reporting to work.

#### **G. Sick Leave Concurrent with Other Leave**

##### **1. Family and Medical Leave:**

- a. Eligible employees may take FMLA concurrently with sick leave when the reason for leave qualifies under both this policy and the FMLA Policy.
- b. Employees taking FMLA leave for purposes qualifying for use of sick leave will be required to take a minimum of 20 hours of accrued sick leave each week, concurrently with FMLA leave, except as provided below. The 20-hour requirement will be prorated for part-time employees based on either:
  - i. The part-time employee's regular schedule at the time the employee is on a FMLA-qualified absence; or
  - ii. The average amount of time the employee is in a pay status when agency management cannot determine or has not assigned a regular schedule.

2. **Maternity Leave:** Eligible employees may take maternity leave concurrently with sick leave when the reason for leave qualifies under both this policy and the Maternity Leave Policy.

3. **Parental Leave:** State law limits the use of sick leave during parental leave to 15 days for birth fathers and adoptive parents unless the additional absence qualifies for use of sick leave for another reason ([2-18-606](#), MCA). Please see the Parental Leave Policy for additional information.

#### **H. Transfers**

When employees transfer employment from one agency to another, or one position to another, without a break in service, any unused sick leave balance transfers with them. The receiving agency must assume the liability.

**I. Termination of Employment**

1. Employees who terminate employment shall receive cash compensation at their regular rate for one-fourth of their unused sick leave balance unless:
  - a. The employee has not met the 90-calendar-day waiting period.
  - b. The termination reason was “abuse of sick leave.”
  - c. The employee is a member of a Voluntary Employee Benefit Association (VEBA) plan, and the unused sick leave must be converted to an employer contribution to the trust.
  - d. The employee voluntarily donates all or a portion of the unused leave to the Sick Leave Fund.
2. Employees who work for more than one agency and terminate employment with only one agency may transfer unused sick leave credits to the remaining agency, upon approval of the remaining agency. Otherwise, cash compensation is the responsibility of the terminating agency.
3. The same rules apply to employees who work in two or more positions in the same agency and terminate employment in only one position within the agency.

**J. Payroll Records**

1. Agency management must retain and maintain documentation for requests and use of sick leave in accordance with the Employee Records Management Policy requirements and other applicable laws and regulations.
2. The central payroll office in Department of Administration maintains records of employees’ sick leave accrual and usage.

**K. Abuse of Sick Leave**

1. Sick-leave abuse occurs when an employee uses sick leave for unauthorized purposes or misrepresents the actual reason for charging an absence to sick leave. Sick-leave abuse is cause for dismissal and forfeiture of the lump-sum payment ([2-18-618](#), MCA).
2. Abuse also may occur when an employee establishes a pattern of sick-leave usage over a period of time. Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline, pursuant to Discipline Handling Policy ([2.21.6505 through 2.21.6509](#), ARM).

3. Any charges of sick-leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to the appropriate grievance procedure.

**L. Work-Related Accident, Injury, or Illness**

1. An employee who suffers an on-the-job accident, injury, or work-related illness may be eligible for workers' compensation benefits. An injured or ill employee may not receive wage-loss benefits if the employee is receiving sick-leave benefits, except:
  - a. Sick leave may be used and counted toward the required waiting period, which is the lesser of 32 hours or four days.
  - b. Agency management may use sick leave to augment workers' compensation temporary total disability benefits pursuant to a collective bargaining agreement as provided in [39-71-736](#), MCA.
2. Agency management should notify the Montana State Fund of sick-leave benefits paid in this situation.

**M. Sick Leave Accrued Prior to July 1, 1971**

Employees retain sick leave credits earned and recorded before July 1, 1971 ([2-18-618](#), MCA). Sick-leave credits earned prior to July 1, 1971, may be transferred between agencies but are not eligible for lump-sum payment when employees terminate employment, and they must be used before other sick-leave credits.

**IV. Resources:**

**A. Montana Code Annotated:**

1. Sick Leave – [2-18-618](#), MCA.
2. Compensation – from what dates paid – [39-71-736](#), MCA.

**B. Administrative Rules of Montana:**

1. Discipline – ARM 2.21.6505 - 6509
2. Employee Records Management – ARM 2.21.6605-6606, 2.21.6608, 2.21.6611, and 2.21.6622
3. Non-Discrimination EEO - ARM 2.21.4001-4007 and 2.21.4012-4012

### **C. State Policy:**

1. Sick Leave Fund Policy
2. Holiday Policy
3. Family and Medical Leave (FMLA) Policy
4. Maternity and Parental Leave Policy

### **V. Definitions:**

All definitions under [2-18-101](#), MCA, apply to this policy. The following definitions also apply:

**Immediate family member:** An employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild, or corresponding in-law.

**Break in service:** A period in excess of five consecutive working days when the employee is not working, is not on an approved leave of absence, and terminates the employment relationship.

**Genetic information:** As defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

**In a pay status:** An employee who received pay for time worked or for annual leave, sick leave, sick leave fund grants, holidays, compensatory time, or other paid leave.

**Short-term attendance:** A range of hours up to a maximum of 40 hours for each occurrence.