

DEPARTMENT OF HUMAN RESOURCES
4.4.1 JUDICIARY LEAVE BANK GUIDELINES

(a) Purpose and Scope

The Judicial Branch recognizes that employees may suffer from serious and prolonged illnesses that prevent them from performing their duties for extended periods, and that such employees may not have sufficient accrued leave to cover such absences. To minimize the economic impact of these circumstances, the Judicial Branch has established a leave bank program for Employees paid through the State Comptroller who are subject to the leave and personnel policies promulgated by the State Court Administrator (Regular Employees).

These guidelines do not apply to the following entities organized within the Judicial Branch and their respective employees: the Registers of Wills, the Orphans Courts, the Circuit Courts (*not including the Clerks' Offices as those employees are paid through the State Comptroller and are covered by personnel policies promulgated by the State Court Administrator*), the Attorney Grievance Commission, and the Client Protection Fund.

These guidelines also do not apply to the Clerks of Court, Contractual and Temporary Employees, Judges, and judicial Law Clerks.

(b) Not a Contract or Entitlement

This guideline does not create a contract or an entitlement to receive leave from the leave bank, even if the employee is entitled legally to a leave of absence. The decision to grant leave from the leave bank is made at the discretion of the State Court Administrator or designee, and is not contingent upon or required by an employee's legally protected absence.

(c) Denial of Leave from the Leave Bank Not Subject to a Grievance Action

Pursuant to subsection (b), an employee enjoys no entitlement to receive leave from the leave bank. The decision to grant leave from the leave bank is made at the discretion of the State Court Administrator or designee. As such, the decision is final and not subject to a grievance action or other administrative appeal.

(d) Employee Responsibility

Employees are required to manage their own leave in accordance with Judiciary leave policies and to anticipate when their earned leave will be exhausted.

Leave from the leave bank will not be applied retroactively.

An exception may be made if the absence is the result of an unforeseen documented medical emergency experienced by the employee that prevented the employee from requesting leave in advance of its use. Except in such an emergency, leave will not be applied retroactively to cover absences occurring prior to the date the employee's Administrative Head receives all completed paperwork and sufficient medical documentation.

(e) Definitions

(1) Administrative Head

- (A) For the Appellate Courts, the Clerk of the Court for all employees under the Clerk's supervision, and the Chief Judge for all other employees, in the appellate court where the employee works;
- (B) For each Circuit Court Clerk's office, the Clerk of the Court for all employees under the Clerk's supervision and the County Administrative Judge for all state employees under his or her supervision;
- (C) The Chief Judge of the District Court for employees of that Court, the Chief Clerk, or the Administrative Clerk or Administrative Commissioner for all employees under his or her supervision;
- (D) For the Administrative Office of the Courts (AOC), the State Court Administrator;
- (E) For specified Units organized within the Judicial Branch, the head of the Unit where the employee works; or,
- (F) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.

(2) Judiciary Human Resources Department (JHRD) – The administrative unit within the Administrative Office of the Courts responsible for the interpretation of these guidelines.

(3) Leave Year – A period of time beginning with the first day of the first complete pay period of a calendar year and ending with the last day of the pay period that includes December 31 of that calendar year.

(4) Regular Employee – For purposes of this policy, an employee holding a position funded under an approved budget, paid through the Central Payroll Bureau of the Comptroller, and having an assigned Position Identification Number (PIN). This does not include Clerks of Court, Contractual and Temporary Employees, Judges, and judicial Law Clerks.

(5) Unit – The State Board of Law Examiners, the Maryland State Law Library, the

(f) Eligibility and Usage

(1) Eligibility

- (A) Regular Employees may be eligible to receive leave from the Judiciary leave bank, if the following criteria are met:
- (i) The employee has successfully completed both six months of service under the supervision of one or more of the Administrative Heads and the initial probationary period, if one is required;
 - (ii) The employee has exhausted all other available paid leave (annual, personal, sick and compensatory leave);
 - (iii) The employee was rated meets standards or better on the employee's most recent annual performance evaluation;
 - (iv) The employee has not been subject to disciplinary action within the past 12 months;
 - (v) The employee has not been subject to a one-day medical slip requirement within the past 12 months;
 - (vi) The employee is not on a Performance Improvement Plan;
 - (vii) The employee is a member of the leave bank; and
 - (viii) The employee has not already received from the leave bank, or as donated leave, 320 hours of leave within the past 12 months, or 1040 hours of leave over the employee's career.
- (B) An employee will not be eligible if any of the above criteria is not met.

(2) Usage

- (A) An employee may receive leave from the leave bank to cover the absence of the employee for the employee's serious and prolonged medical condition that: (i) exists at the time the request is made; (ii) qualifies the employee to receive leave under the Family and Medical Leave Act (FMLA) and the employee has not exhausted the allotted 480 hours of FMLA within the 12-month rolling period; and (iii) results in an absence of at least five consecutive work days. An employee who is not entitled to FMLA may receive leave from the leave bank in accordance with paragraph (F).

The leave also may be used for later intermittent absences that are directly associated with the serious and prolonged medical condition for which use of the leave bank was granted initially, for a period not to exceed six weeks. (Example: An employee is absent two weeks due to injuries suffered in an automobile

accident. The employee receives leave from the leave bank for that absence. The employee returns to work but needs to attend physical therapy twice a week during work hours to treat the injuries. The employee may use leave from the leave bank for the therapy sessions for a period not to exceed six weeks. Otherwise, the leave is not to be used for absences of less than five consecutive work days).

- (B) An employee requesting leave from the leave bank shall submit medical documentation substantiating the employee's serious health condition, inability to work and expected return to work date.

The documentation shall include: medical provider's name, address, telephone number and signature; information that supports the absence (including the ICD and CPT codes); date of commencement of absence; an anticipated return-to-work date (except in situations described in (E) below, an anticipated return-to-work date is a prerequisite for receiving leave from the leave bank); and the ability of the employee to perform the essential functions of the job upon the employee's return to work.

- (C) A determination of whether the medical documentation sufficiently substantiates that the employee has a serious and prolonged medical condition that prevents the employee from working and whether the employee will be able to return to work upon recovery shall be made by the JHRD, in consultation as needed with the State Medical Director.
- (D) If the employee fails to satisfy any of the above criteria, including providing an anticipated return-to-work date, the employee shall be denied the use of leave from the leave bank.
- (E) An exception may be made to the anticipated return-to-work date requirement if the employee has submitted an application for disability retirement benefits and is awaiting an award of such benefits. In such cases, the Director of the JHRD, or the State Court Administrator for employees within the AOC, may grant leave from the leave bank to include only enough hours to cover the employee's retirement contribution and the employee's portion of his or her health benefits each pay period pending a decision on the application for disability retirement. The leave bank approval will cease once a decision on eligibility is rendered unless, at that time, the employee provides an anticipated return-to-work date and has not exhausted the limits in (g).
- (F) A leave bank approval may be granted if the employee presently is not entitled to FMLA only under the following conditions:
 - (i) An approval may be granted for a serious and prolonged medical condition

that continues to prevent the employee from performing his or her essential functions. The JHRD may consult with the State Medical Director in making this determination;

- (ii) The approval will authorize sufficient hours to cover only the employee's retirement contribution and the employee's portion of his or her health benefits for each pay period during the covered absence;
- (iii) The yearly and career usage limits still apply; and,
- (iv) The JHRD may provide guidance and assistance to the employee in applying for disability retirement benefits.

(g) Limits

The cumulative amount of leave an employee may receive from the leave bank, when added to that already received, may not exceed 320 hours within the last 12 months or 1,040 hours for the employee's career. These amounts include any leave from the leave bank and employee-to-employee leave donations previously received from the Judiciary Leave Bank and Leave Donation Program, the Executive Branch State Employees' Leave Donation and Leave Bank Program, or similar state program.

(h) Enrollment and Administration

(1) Enrollment in the Leave Bank

- (A) To be a member of the leave bank, an employee must donate to the bank a minimum of eight hours of annual, personal, compensatory or sick leave. There is no requirement that an employee have a minimum amount of leave remaining after making a donation to the bank.
- (B) Membership in the leave bank is for one year, unless the leave in the leave bank is depleted, at which time employees will be notified and given the option of rejoining by donating an additional minimum of eight hours of leave. In this circumstance, employees who have already served the 90-day waiting period for eligibility required in subsection (E) below will not be required to serve another waiting period for eligibility.
- (C) An eligible employee may enroll in the bank during the leave bank open enrollment period, upon notification by the Director of JHRD. To participate, the employee must enroll in the leave bank in the manner required by the JHRD. The employee's leave balance will be adjusted accordingly and the employee will be a member of the leave bank for one year. The membership will commence at the beginning of the next Leave Year and end at the conclusion of that Leave Year, unless an employee has not yet completed both six months of service, and the initial probationary period (if one is required), when the leave bank open enrollment period occurs.

- (D) Employees Who Have Not Yet Completed Six Months of Service or the Probationary Period.

If an employee has not yet completed six months of service and any applicable initial probationary period when the leave bank open enrollment period occurs, the employee may enroll in the leave bank within 10 work days of completing the service and any applicable probationary period requirement. The employee shall donate a minimum of eight hours of leave to enroll. The employee's leave balance will be adjusted accordingly and the employee will be a member of the leave bank for the remainder of the Leave Year for which he or she enrolled. If the employee does not enroll within 10 work days, the employee will be required to wait until the next enrollment period.

- (E) There is a one-time 90-day waiting period for eligibility to withdraw leave from the leave bank for employees enrolling in the leave bank for the first time.
- (F) Membership in the State Employees Leave Bank, or other such program in another unit of state government, does not transfer to the Judiciary Leave Bank. An employee who transfers to the Judicial Branch from another unit of state government where he or she was a member of the State Employees' Leave Bank, or another similar program, will be required to complete six months of service and the initial probationary period, if one is required, before being eligible to enroll in the Judiciary Leave Bank.

(2) Requesting Leave from the Leave Bank

- (A) To request leave from the leave bank an employee shall complete the Medical Certification/ Request for Leave Form and submit the form to the employee's Administrative Head.
- (B) Within five business days of receiving the completed form, the Administrative Head shall forward the form to JHRD and make a recommendation as to whether the employee should be granted leave from the leave bank. The Administrative Head shall also provide sufficient documentation and analysis to support the recommendation.

(3) Granting Leave from the Leave Bank

- (A) As the designee of the State Court Administrator, the JHRD, in consultation with the Administrative Head, will determine, as an exercise of its discretion, whether the employee will be granted leave from the leave bank. For employees within the Administrative Office of the Courts, the State Court Administrator, or his or her designee, will make that determination. The JHRD, or State Court

Administrator or his or her designee, as appropriate, will notify the employee of the decision.

- (B) Notwithstanding an employee's eligibility, the granting of leave from the leave bank is contingent upon the availability of leave in the bank.
- (C) Leave that is granted to an employee and not used shall remain in the leave bank.

(4) Forfeited Leave Placed in the Judiciary Leave Bank

- (A) Accumulated and unused annual leave in excess of the limits set by policy, and any unused personal leave, shall be forfeited by an employee at the completion of the Leave Year. An employee also may be required to forfeit annual or personal leave as a result of a disciplinary action. Leave that is forfeited for these reasons will be placed in the leave bank.
- (B) Upon separation from employment, unused sick leave, personal leave, and unused compensatory leave exceeding 240 hours, will be placed in the leave bank.
- (C) Annual leave and compensatory leave paid out upon separation or for other reasons and sick leave used to supplement an employee's years of service upon retirement are not subject to forfeiture to the leave bank.

(5) Leave Accruals While Receiving Leave from the Leave Bank

An employee continues to accrue sick and annual leave while receiving leave from the leave bank. Such accruals are applied to an employee's absence each pay period prior to applying leave from the leave bank. The accrual rates are reduced if the employee has any leave-without-pay within the pay period. The reduction is proportionate to the amount of leave-without-pay within the pay period.

(6) Restrictions on Use of Accrued Leave

Once approved to use leave from the leave bank, an employee shall not use annual, personal or compensatory leave in a discretionary manner unless that leave is being used in lieu of sick leave. This restriction shall remain in effect for the duration of the approval period.

(7) Apportionment of Leave from the Leave Bank

The total amount of leave from the leave bank may not be sufficient to cover an employee's entire absence. In that event, the Director of JHRD, or the State Court

Administrator for employees within the AOC, may apportion the leave as necessary so that an employee will receive enough wages each pay period to cover the cost of his or her retirement and health benefits contributions during the absence.

(8) Referral for Medical Evaluation

The Judicial Branch reserves the right to refer an employee who has applied for leave from the leave bank for a medical evaluation.

(i) Exceptions

The Chief Judge of the Court of Appeals or the State Court Administrator may make exceptions to these guidelines.

(j) Interpretive Authority

The Judiciary Human Resources Department is responsible for the interpretation of these guidelines.