

DEPARTMENT OF HUMAN RESOURCES

4.4.1. JUDICIARY LEAVE BANK GUIDELINES

(a) Purpose and Scope

- (1) 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 enough accrued leave to cover such absences. To minimize the economic impact of these circumstances, the Judicial Branch has established a Leave Bank program (hereafter referred to as “Bank”) for Employees paid through the State Comptroller who are subject to the leave and personnel policies promulgated by the State Court Administrator (Regular Employees).
- (2) 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.
- (3) 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

These guidelines do not create a contract or an entitlement to receive leave from the Bank, even if the employee is legally entitled to an absence. The decision to grant leave from the 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 Bank Not Subject to a Grievance Action

Pursuant to subsection (b), an employee enjoys no entitlement to receive leave from the Bank. The decision to grant such leave is 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

- (1) Employees should conserve accrued leave in anticipation of medical emergencies. The Bank is intended to provide leave for serious medical or other FMLA events for which the employee was unable to plan, or which requires leave that exceeds the normal leave accruals.

- (2) Employees are required to manage their leave in accordance with Judiciary leave policies and to anticipate when their accrued leave will be exhausted. An employee who has a planned medically related absence must make every effort to save leave to cover the absence. If it is determined the employee purposely exhausted accrued leave prior to the absence, the employee may be denied leave from the Bank.
- (3) Leave from the Bank will not be applied retroactively. An exception may be made if the absence is the result of an employee's unforeseen documented medical emergency 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 medical documentation necessary to approve the request for leave.

(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) **Designee** -- The Administrative Head may designate, in writing or orally, someone to act on his or her behalf in all matters pertaining to these guidelines. Therefore, any reference in these guidelines to the Administrative Head also includes his or her Designee.
- (3) **Judiciary Human Resources Department (JHRD)** – The department within the Administrative Office of the Courts responsible for the administration and interpretation of these guidelines.
- (4) **Leave Year** – A time period 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.

- (5) **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.
- (6) **Unit** – The State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure.

(f) Eligibility and Usage

(1) Eligibility

- (A) Regular Employees may be eligible to receive leave from the Bank, if the following criteria are met:
 - (i) The employee has successfully completed 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 available 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 did not receive a disciplinary action within the past 12 months;
 - (v) The employee was not placed on 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 Bank; and
 - (viii) The employee has not received 320 hours of leave from the Bank within the past 12 months or 1040 hours of leave from the Bank and donated leave in the employee’s career.
- (B) An employee will not be eligible if any of the above criteria is not met or if the Administrative Head or the JHRD believes that the employee did not comply in good faith with Section (d).

(2) Usage

- (A) An employee may receive leave from the Bank to cover the employee’s absence 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 workdays. An employee who is not entitled to FMLA may receive leave from the Bank in accordance with paragraph (F).
- (B) 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 leave from the 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 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 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 workdays).
- (C) An employee requesting leave from the Bank shall submit medical documentation substantiating the employee's serious health condition, inability to work and an expected return to work date. The documentation shall include:
 - (i) Medical provider's name, address, telephone number and signature;
 - (ii) Information that supports the absence (including the ICD and CPT codes);
 - (iii) Date of commencement of absence;
 - (iv) An anticipated return-to-work date (except in situations described in (F) below, an anticipated return-to-work date is a prerequisite for receiving leave from the Bank); and
 - (v) The ability of the employee to perform the essential functions of the job upon the employee's return to work.
- (D) 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.
- (E) 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 Bank.
- (F) An exception may be made to the anticipated return-to-work date requirement if the employee submits an application for disability retirement benefits. In that case, the Director of the JHRD, or the State Court Administrator for employees within the AOC, may grant leave from the 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 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).

- (G) An approval for leave from the Bank may be granted if the employee presently is not entitled to FMLA only under the following conditions:
- (i) The employee has 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 hours needed 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 Bank, when added to that already received, may not exceed 320 hours within the last 12 months or 1,040 hours of leave for the employee's career. These amounts include any leave from the 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 Bank

- (A) To be a member of the 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 donating to the Bank.
- (B) Membership in the Bank is for one year, unless the leave in the 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 Bank's open enrollment period, upon notification by the Director of JHRD. To participate, the employee must enroll in the 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 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 six months of service and the initial probationary period (if one is required) when the Bank's open enrollment period occurs.

- (D) If an employee has not yet completed six months of service and any applicable initial probationary period when the Bank's open enrollment period occurs, the employee may enroll in the Bank within 10 workdays 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 Bank for the remainder of the Leave Year for which he or she enrolled. If the employee does not enroll within 10 workdays, 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 Bank for employees enrolling 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 Bank

- (A) To request leave from the 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 Bank. The Administrative Head shall also provide documentation and analysis necessary to support the recommendation.

(3) Granting Leave from the Bank

- (A) As the designee of the State Court Administrator, the JHRD, in consultation with the Administrative Head, will determine, at its discretion, whether the employee will be granted leave from the 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, granting leave from the 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 Bank.

(4) Forfeited Leave Placed in the 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 Bank.
- (B) Upon separation from employment, unused sick leave and personal leave will be placed in the 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 Bank.

(5) Leave Accruals While Receiving Leave from the Bank

An employee continues to accrue sick and annual leave while receiving leave from the Bank. Such accruals are applied to an employee's absence each pay period prior to applying leave from the 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 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 Bank

The total amount of leave from the Bank may not be enough 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 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.