

 <b>Montana Operations Manual Policy</b>	Category	<b>Human Resources/ Employee Benefits</b>
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Issuing Authority	<b>Department of Administration Health Care and Benefits Division</b>	
<b>Sick Leave Fund Policy</b>		

**I. Purpose**

This policy establishes the structure, eligibility requirements, and procedures used to administer Direct Grants and the Sick Leave Fund.

**II. Scope**

This policy covers all employees in Montana's executive, legislative, and judicial branches. Elected officials are not eligible.

**III. Administration**

- A. The Department shall establish and administer the Sick Leave Fund and Direct Grant program, including auditing for agency compliance.
- B. The Department shall consult with the State Employee Group Benefits Advisory Council (SEGBAC) regarding administration of the sick leave fund, as provided in Section 2-18-618, MCA.
- C. The employing Agency shall grant a leave of absence pursuant to the Department's policies for FMLA leave. The employing Agency shall approve an award of sick leave hours from the Sick Leave Fund or Direct Grant program pursuant to this policy. Nothing in this policy guarantees that a leave of absence will be approved, or that an Employee will be awarded sick leave hours from the Fund or Direct Grant program.
- D. Funds may not attach to sick leave hours donated to the Sick Leave Fund or Direct Grant program, or to hours received from the Fund or Direct Grant

program. The employing Agency of the recipient Employee shall pay all costs of the recipient Employee's use of those sick leave hours.

#### **IV. General Provisions for Sick Leave Fund and Direct Grants**

- A. An eligible, full-time Employee may receive up to a maximum of 240 hours sick leave from the Sick Leave Fund, Direct Grants, or a combination of both in a 12-month period. Agencies shall calculate the 12-month period beginning with the first day an Employee uses sick leave obtained through the Fund or Direct Grants. If the Employee continues using sick leave hours from the Fund or a Direct Grant, another 12-month period starts on the day immediately following the end of that initial 12-month period. If the Employee is not using sick leave hours at the end of that initial 12-month period, a new 12-month period starts with the first day that an Employee uses credits from the Sick Leave Fund or a Direct Grant.
- B. Agencies shall allot up to 40 sick leave hours a week for a full-time Employee, for a maximum allotment of 80 hours per 2-week pay period. Sick leave hours must be rounded up to the nearest half-hour increment.
- C. Agencies shall prorate the available hours for a part-time Employee based on either:
  - 1. the part-time Employee's regular schedule at the time the Employee became eligible for the Sick Leave Fund or a Direct Grant; or
  - 2. the average amount of time the Employee is in a Pay Status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the qualifying event an Employee was in a Pay Status an average of 20 hours per week, the maximum available sick leave is 120 hours in a 12-month period.
- D. Except as described below, an Employee may not contribute a combined total of more than 80 hours of sick and annual leave to the Sick Leave Fund, Direct Grants, or a combination of both in a 12-month period unless the Contribution is derived from excess annual leave that would otherwise be forfeited. If annual leave that would otherwise be forfeited is part of an Employee's annual Contribution, the total for that Employee may include the 80 hours and any leave at risk of forfeiture. In any case, an Employee's Contribution may not reduce either of the Employee's accumulated sick leave or annual leave balances below 40 hours. Agencies shall calculate the 12-month period from the first day of the pay period following the pay period in which an Agency removes the first Contribution from the contributing Employee's account.

1. Upon termination of employment, an Employee may contribute 100% of the Employee's accrued sick leave to the Sick Leave Fund. The Employee must contribute all sick leave accrued as of the date of termination to the Fund if the Employee elects this option. This option does not apply to Employees who are group members in the Montana VEBA HRA pursuant to 2-18-1301, MCA, et seq.
  2. An Employee may exceed the 80-hour limit to make a Contribution as requested by the Department pursuant to Section IX of this policy.
- E. Subject to Agency approval, an Employee may use sick leave obtained from the Sick Leave Fund or a Direct Grant:
1. to provide continuing necessary care for a spouse, child, or parent with a Serious Health Condition, as defined in the Department's Family and Medical Leave Policy;
  2. for the Employee's continuing Serious Health Condition that is the same Serious Health Condition that caused the Employee to become eligible to receive sick leave;
  3. in the same pay period in which an Agency adds sick leave credits to the Employee's account.
- F. If an Employee is incapacitated and unable to apply for the Sick Leave Fund or a Direct Grant, another person may do so for the Employee.
- G. When approving a leave of absence, a supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek; for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay may be used.
- H. Agreeing to receive sick leave from the Fund or a Direct Grant constitutes an Employee's approval, as required in 2-18-615, MCA, to use all accrued annual leave for reasons of illness.
- I. An Employee's participation in the sick leave fund or the direct grant program does not prohibit Agency management from taking appropriate disciplinary action due to an Employee's unauthorized absence from work.

## **V. Prohibited Uses of Sick Leave Fund and Direct Grants**

- A. An Employee may not use sick leave from the Sick Leave Fund or a Direct Grant:

1. if the Employee is eligible for workers' compensation wage loss benefits;
  2. during a leave of absence without pay which was approved for reasons other than a Serious Health Condition or providing necessary care for a spouse, child, or parent with a Serious Health Condition. See Section IV.E for more information;
  3. when the Employee has sick leave or compensatory time available that accrued after the Employee began using sick leave from the Sick Leave Fund or a Direct Grant. Sick leave or compensatory time accruing after becoming eligible for and using sick leave from the Fund or a Direct Grant must be used each pay period to remain eligible for use of sick leave from the Fund or a Direct Grant;
  4. retroactively for a prior pay period in which the Employee was in a leave without pay status and ineligible for sick leave from the Fund or a Direct Grant. Note: if sick leave hours are from a Direct Grant, the contributing Employee's donation of sick leave hours and the eligible recipient Employee's use of sick leave hours must occur during the same pay period. The employing Agency must submit the Sick Leave Form on or before the Friday preceding the payday of the affected payroll period. See Section VII.D for more information.
- B. The employing Agency shall take all above reasons into account and grant sick leave to the recipient Employee on an as-needed basis. The employing Agency shall calculate hours pursuant to Section IV, including the maximum amount (prorated for part-time Employees). The Agency shall notify the Employee if the Employee is not entitled to the requested sick leave. If the Employee's request is denied, the Employee may have the right to appeal. See Section XII for a description of the appeal process.

## **VI. Eligibility to Receive Sick Leave from the Sick Leave Fund or a Direct Grant**

- A. To be eligible to receive sick leave, an Employee shall have:
1. met the 90-day qualifying period to take sick leave, as provided in 2-18-618, MCA;
  2. a Serious Health Condition or provided necessary care to a spouse, child or parent with a Serious Health Condition, resulting in the Employee's absence from work of no less than two full consecutive weeks of regularly scheduled working days or 10 consecutive working days, whichever occurs first, per illness or injury. A working day means any day for which an Employee has regularly scheduled hours and does not include recognized holidays. If a recognized holiday for which the Employee would have been

paid falls within the 2-week period, the Employee must be absent additional working day(s) up to the maximum of 10 consecutive working days. Days worked prior to the end of the 90-day qualifying period may accrue to the 10 consecutive working day requirement;

3. used all available accrued sick leave, annual leave, other accrued paid leave, and compensatory time;
  4. received approval from the supervisor for leave of absence;
  5. received approval from the Agency head or designee to receive sick leave;
  6. when requested by the employing Agency, provided a physician's certification of a Serious Health Condition;
  7. If applying for a grant from the Fund, Employee must have been a Participating Employee for at least 90 calendar days. The 90-day period begins on the first day of the pay period following the pay period in which the Participating Employee's initial Fund Contribution was deducted from the Participating Employee's sick or annual leave accounts, or the first day of the pay period following the date of the Participating Employee's request to the employing Agency, whichever occurred first.
- B. Once the Employee meets all requirements under paragraph A above, sick leave may be granted on an intermittent basis if for the same illness or injury. For example, if an Employee has a cancer diagnosis but can work regularly scheduled working days intermittently with days of leave for cancer treatments, the Employee is eligible once the Employee has been absent for two consecutive weeks of regularly scheduled working days or 10 consecutive working days, whichever occurs first (not including recognized holidays).
- C. Meeting the eligibility requirements of this policy does not guarantee an employing Agency head or designee will approve the Employee's use of the Sick Leave Fund or a Direct Grant.

## **VII. Sick Leave Fund Procedures**

- A. To request an allocation from the Sick Leave Fund, a Participating Employee or the Participating Employee's representative shall submit a completed Sick Leave Form to the appropriate Agency staff.
- B. The employing Agency shall certify the Participating Employee meets all eligibility requirements in Section VI.

- C. If the Participating Employee does not meet eligibility requirements, the employing Agency must give written notification to the Participating Employee to explain the reason for the denial and describe the appeal process and deadline by which to submit the appeal. See Section XII for a description of the appeal process.
- D. The employing Agency shall submit the completed Sick Leave Form by email or fax to the Department by the Friday preceding the payday of the affected payroll period. For example, if the payroll period ends on Friday, January 31<sup>st</sup>, the completed Sick Leave Form must be submitted by the following Friday, February 7<sup>th</sup>. The completed Sick Leave Form must specify the number of sick leave hours requested.
- E. The Department shall confirm the Fund has a sufficient balance to meet the Fund request. The Department shall notify the employing Agency if sufficient hours are not available.
- F. The employing Agency shall add sick leave hours to the Participating Employee's account. The Agency should add approved sick leave hours to the Participating Employee's account on an as-needed basis, which is typically at the end of each pay period.
- G. When an Employee contributes annual leave to the Fund, the Contribution converts to sick leave when an Agency removes the annual leave from the Employee's account.

### **VIII. Eligibility Requirements to Contribute to the Sick Leave Fund**

- A. Any permanent or seasonal Employee as defined in 2-18-601, MCA, may enroll to contribute to the Fund at any time.
- B. To enroll in the Sick Leave Fund, a permanent or seasonal Employee shall:
  - 1. have completed the 90-day qualifying period to take sick leave, pursuant to Section 2-18-618, MCA (if donating sick leave), or completed the 180-day qualifying period to use annual leave, pursuant to Section 2-18-611, MCA (if donating annual leave);
  - 2. submit a completed Sick Leave Form to the appropriate Agency staff that shows a full-time Employee is making an initial Contribution of a minimum of 8 hours of accrued sick and/or annual leave to the Fund. Agencies shall prorate the initial Contribution to the Fund for a part-time Employee based on either:

- a. the part-time Employee's regular schedule at the time the Employee makes the initial Contribution; or
  - b. the average amount of time the part-time Employee is in a Pay Status when Agency management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the initial Contribution a part-time Employee was in a Pay Status an average of 20 hours per week, the Employee's minimum initial Contribution is 4 hours.
- C. A Contribution to the Sick Leave Fund may not reduce a full-time Employee's balance of sick leave or annual leave below 40 hours. Agencies shall prorate the minimum balance for a part-time Employee based on either:
1. the part-time Employee's regular schedule at the time the Employee makes the initial Contribution; or
  2. the average amount of time the Employee is in a Pay Status when Agency management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the initial Contribution a part-time Employee was in a pay status an average of 20 hours per week, the Employee shall keep a minimum balance of 20 hours each of sick leave and annual leave after making the Contribution.
- D. Each employing Agency shall certify an Employee is eligible to contribute sick and/or annual leave as described in Section VIII. Each Agency is responsible for deducting Fund Contributions from an Employee's sick leave and/or annual leave accounts. Employing agencies shall submit completed Sick Leave Forms to the Department. See Section VII.D for more information.
- E. All Contributions to the Fund are voluntary and irrevocable.
- F. An Employee remains a Participating Employee unless or until the Employee:
1. fails to authorize an additional Contribution pursuant to Section IX;
  2. terminates employment with state government; or
  3. resigns in writing from the Fund.

## **IX. Sick Leave Fund Shortfall – Additional Employee Contributions**

- A. The Department will cease all approvals of sick leave credits from the Sick Leave Fund when the Fund balance falls below 1,000 hours. If this occurs,

Participating Employees must make additional Employee Contributions as described in Section IX.C to continue as a Participating Employee.

- B. If additional Contributions are necessary, the Department will determine the amount of sick leave or annual leave needed from each Participating Employee to maintain the solvency of the Fund.
- C. Participating Employees may authorize any required additional Contributions within 45 days of the Department's request by submitting a completed Sick Leave Form to the appropriate Agency staff, subject to Section IX.D exceptions.
  - 1. If a Participating Employee does not submit a completed Sick Leave Form authorizing the requested Contribution, the Employee's participation in the Fund is terminated.
  - 2. The Employee may be eligible to rejoin the Fund. An Employee who rejoins the Fund must meet all initial eligibility requirements in Section VI and wait 90 days from the date the Employee rejoins the Fund to become eligible to receive sick leave credits from the Fund.
- D. Participating Employees who are using their accrued sick leave or who have used sick leave within the previous 6 months for their own illness or accident, or who will have less than 40 sick leave hours after a Contribution, are exempt from any required Contribution of hours. The employing Agency shall notify the Department of these Employees within 45 days of the date the Department gives notice of a request for additional Contributions pursuant to Section IX.

## **X. Direct Grant Procedures**

- A. An Employee who chooses to contribute sick leave under the Direct Grant program shall submit a completed Sick Leave Form to the appropriate Agency staff.
- B. The contributing Employee's Agency shall certify:
  - 1. the contributing Employee has met the eligibility requirements in Section XI to make a direct grant; and
  - 2. the Agency deducted the appropriate hours from the contributing Employee's sick leave account.
- C. If the Direct Grant recipient is in a different Agency from the contributing Employee, the contributing Employee's Agency shall submit a copy of the Sick Leave Form to the recipient Employee's Agency. If the Direct Grant recipient



and the contributing Employee are both in the same Agency, the Agency shall follow the recipient agency procedures described in Section X.D below.

- D. The recipient Agency shall certify that the recipient Employee meets the eligibility requirements in Section VI.
  - 1. If the Employee meets the eligibility requirements, the recipient Agency shall add approved sick leave to the recipient Employee's account on an as-needed basis at the end of each pay period. The recipient Agency must submit the completed Sick Leave Form for a completed Direct Grant transaction to the Department by the Friday preceding the payday of the affected payroll period.
  - 2. If the Employee is ineligible, the recipient Agency shall return the Sick Leave Form to the contributing Employee's Agency to re-credit the contributing Employee's sick leave balance. The recipient Agency shall also give written notification to the Employee to explain the reason for the denial and describe the appeal process and deadline by which to submit the appeal. See Section XII for a description of the appeal process.
- E. The donation by the contributing Employee and the use of those hours by the recipient Employee must occur during the same pay period.

## **XI. Eligibility Requirements to Make a Direct Grant**

- A. To be eligible to make a Direct Grant of sick leave, an Employee must:
  - 1. have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA; and
  - 2. not reduce the full-time Employee's balance of sick leave below 40 hours after making the Contribution to a direct grant. Agencies shall prorate the minimum balance for a part-time Employee based on either:
    - a. the part-time Employee's regular schedule at the time the Employee makes the initial Contribution; or
    - b. the average amount of time the Employee is in a Pay Status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the Contribution, a part-time Employee was in a Pay Status an average of 20 hours per week, the Employee shall keep a minimum balance of 20 hours of sick leave after making the Contribution.

- B. A terminating Employee's eligibility to make a Direct Grant depends on the recipient Employee's eligibility to receive a Direct Grant. The recipient Employee must be eligible to receive a Direct Grant in the same pay period in which the terminating Employee makes the Direct Grant.
- C. Participation in the Sick Leave Fund is not required to make a Direct Grant.
- D. An eligible Employee may make a Direct Grant of sick leave to an eligible Employee of any Agency.

## **XII. Appeal Procedure for Denial of Sick Leave**

- A. The Employee may appeal a denial of sick leave credits from the Sick Leave Fund or a Direct Grant by submitting a letter to the Department no later than 60 days after the date the Employee received written notice of the denial. The appeal must describe the reasons the Employee disagrees with the denial and include any documentation or other information to support the Employee's appeal.
- B. Eligible denials are those based upon the eligibility criteria in Section VI. Denials of sick leave based on a recipient Agency's lack of funding are not eligible for appeal.
- C. The Employee may request copies of this policy or any information collected or used by the Department to make the determination that the Employee was not eligible for sick leave credits from the Sick Leave Fund or a Direct Grant.
- D. The Department shall review the letter of appeal and any supporting documentation submitted with the letter of appeal and provide a written response to the Employee within 30 days of receipt of the appeal. A copy will be provided to the employing Agency. If special circumstances require additional time for the Department to respond, the Department shall notify the Employee of the reason for the delay. If the delay requires additional response time, the Department shall respond in writing no later than 90 days following receipt of the appeal.
- E. The Department's decision on the appeal is final.

## **XIII. Definitions**

**Agency** - any legally constituted department, board, or commission of state government as provided in 2-18-601, MCA.

**Contribution** - a voluntary and irrevocable contribution of accrued sick leave an Employee donates directly to another Employee or to the Sick Leave Fund or of accrued annual leave an Employee donates directly to the Sick Leave Fund.

**Department** - The Department of Administration. The Health Care and Benefits Division of the Department of Administration administers the Sick Leave Fund and Direct Grants Program.

**Direct Grant** - a grant of sick leave hours that other Employees donate from their accrued sick leave balances to an eligible Employee.

**Employee** - any person employed by any Agency except elected state officials and persons contracted as independent contractors or hired under personal services contracts, as provided in 2-18-601, MCA. Under this policy, a short-term worker is not an Employee.

**Pay Status** – an Employee is in a Pay Status for the hours an Employee is paid at the regular rate up to a maximum of 40 hours in a workweek. Pay Status includes hours an Employee is paid for annual leave, sick leave, holidays, and compensatory time. For the purposes of this policy, the term does not include hours that exceed 40 hours in a workweek, which are paid as overtime or recorded as compensatory time.

**Participating Employee** - an Employee who has met the conditions specified in this policy and has become a member of the sick leave fund.

**Serious Health Condition** – an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. A Serious Health Condition includes a maternity-related disability of the Employee, including prenatal care, birth, miscarriage, abortion, or other treatment.

**Sick Leave Fund or Fund** - a pool established to accumulate and disburse voluntarily and irrevocably contributed accrued sick or annual leave from state Employees for the purpose of providing sick leave to Participating Employees.

**Sick Leave Form** - any of the standardized forms used by the Department to initiate and track Direct Grants, membership in the Sick Leave Fund, and use of sick leave from the Sick Leave Fund.

**Working Day** – a calendar day for which an Employee is in a Pay Status and has regularly scheduled hours. A working day does not include recognized holidays.

#### **XIV. References**

Please refer questions about this policy to the Health Care & Benefits Division or your Agency's human resources office. For additional information, see the following related material:

MOM Annual Leave Policy

MOM Family and Medical Leave Policy

MOM Sick Leave Policy

Montana Code Annotated, Section 2-18-618