

**STATE OF MARYLAND**

**Department of Public Safety  
and Correctional Services**

**PATUXENT INSTITUTION  
Directive**



**PID # 50-32**

**DATE: October 1, 2005**

**SUBJECT: Personnel**

**TITLE: Leave Donation and Leave  
Bank Program**

- I. REFERENCE: Code of Maryland Regulations 17.04.11.22 and 17.04.11.23;  
State Personnel and Pensions Article 9, Subtitle 6  
Department of Budget and Management Leave Bank  
Guidelines (January 2000)
- II. APPLICABLE: All Permanent Employees
- III. PURPOSE: To establish procedures for processing requests for leave from the State  
Employees' Leave Bank and the State Employees' Leave Donation Program.
- IV. DEFINITIONS:

**"Serious and prolonged medical condition"** means a physical or mental impairment that substantially limits the ability of the individual to perform the essential functions of the individual's job, which cannot be accommodated through reasonable accommodation.

**"Catastrophic illness or injury"** means a condition that is incapacitating or life threatening as certified by a health care provider, as defined in the federal Family Medical Leave Act.

**"Immediate family"** means:

1. the spouse of the employee;
2. children, including foster and stepchildren of the employee;
3. parents, stepparents, or foster parents of the employee;
4. brothers and sisters of the employee; and
5. grandparents and grandchildren of the employee.

**"Leave Bank"** means the State Employees' Leave Bank

**"Leave Donation Program"** means the Employee-to-Employee Leave Donation Program.

**"Secretary"** means the Secretary of Budget and Management or the Secretary's designee.

## V. POLICY AND PROCEDURE:

## A. State's Employees' Leave Donation Program

1. Any permanent employee may receive donated leave through the Leave Donation Program due to:

- a) a serious and prolonged medical condition of the employee that existed at the time of the donation; or
- b) a catastrophic illness or injury of a member of the employee's immediate family for whom the employee is needed to provide direct care.

Medical documentation of the need for such donated leave must be supplied by a physician on the MS 401 Form and submitted to the Personnel Office.

2. An eligible employee may donate unused annual, personal and sick leave to another employee. However, sick leave may be donated to another employee only if the donating employee has a sick leave balance of at least **240 hours after the donation is made.**

The receiving employee must have exhausted all forms of paid leave before being eligible to receive any donated leave. The donated leave may only be used for conditions specified in 1. (a) and (b) of this Directive.

3. An employee may not request a leave donation from another employee when the person making the request, or on whose behalf the request is being made, works in a supervisory capacity over the employee from whom the leave is being requested, or is in a position to cause or directly influence the imposition of disciplinary action or some other form of reprisal to be taken against that employee. In such situations, the ability of one employee to enact punishment or a reprisal against the other employee makes the request inherently coercive, threatening or intimidating, and any donation inherently suspect as involuntary.
4. An employee may not request a leave donation from another employee when the person making the request, or on whose behalf the request is being made, has the authority to give, or directly exert influence over the giving of a promotion, appointment, or any other benefit to the employee from whom the leave is being requested.
5. An employee who seeks to receive donated leave from other State employees shall contact the Personnel Administrator. The Personnel Administrator may post and/or distribute notices that an employee would like to receive donated leave as long as the employee is eligible for donated leave and has requested it.

6. An employee who wishes to donate leave to another employee shall complete Part I of the MS 405 form, which can be obtained from the Personnel Office. The donating employee shall submit the MS 405 to the Personnel Office of their agency; at the same time, the donating employee shall forward a copy of the MS 405 form to the employee to whom the leave is to be donated.
7. Within seven days of receiving the MS 405, the donating employee's appointing authority/designee shall determine:
  - a) whether the employee has the amount of annual or personal leave the employee wishes to donate; and
  - b) if the employee wishes to donate sick leave, whether the donating employee will maintain a sick leave balance of at least 240 hours after the donation.

If it is determined that an employee requesting to donate sick leave will not maintain the required 240 hours of sick leave after the donation, the employee shall be given an opportunity to donate fewer hours of sick leave or annual/personal leave.

8. Within seven days after conducting any reviews required in section 7 of this Directive, the donating employee's appointing authority/designee shall forward a copy of the MS 405 form to the receiving employee's appointing authority.
9. Within 14 days of receiving a copy of the MS 405 from the donating employee, the receiving employee shall sign Section II of the MS 405 and submit the required medical documentation to the Personnel Office. The medical documentation must be submitted on Form MS 401, which can be obtained from the Personnel Office.
10. Within 14 days of receiving the MS 405 form, the receiving employee's appointing authority/designee shall determine if the receiving employee is eligible for receiving donated leave in accordance with the conditions specified in 1. (a) and (b) of this Directive.
11. If the receiving employee is determined to be ineligible to receive donated leave, the appointing authority shall deny the receiving employee the use of the donated leave. A determination denying the use of donated leave shall be made within 14 days of the receiving employee's appointing authority's receipt of a completed MS 405 form from the receiving employee. The determination shall:
  - a) Be in writing;
  - b) Include the appointing authority's reason for the denial and supporting documentation; and
  - c) State that the employee may appeal a denial to the Secretary of Budget and Management.

12. Conditions for Receiving Leave Donations. An employee to whom leave is donated:
  - a) May not receive more than combined total of 2,080 hours of donated leave from the State Employee's Leave Bank and from other employees during the employee's entire State service.
  - b) Shall only use the donated leave for a serious and/or prolonged medical illness of the employee or a catastrophic /life threatening illness for a member of the employee's immediate family.
  - c) May not use the donated leave for any continuous period that, when combined with all other forms of paid leave, exceeds 16 months.
  - d) Shall comply with all requirements established by the Department of Budget and Management for the use of earned sick leave.
13. Denials of Use of Donated Leave. An employee shall be denied the use of donated leave if the employee:
  - a) Fails to provide the required medical documentation substantiating a serious and prolonged medical condition of the employee or a catastrophic/life threatening illness of an immediate family.
  - b) Has not exhausted all available annual, personal, sick, and compensatory leave.
  - c) Otherwise fails to qualify for use of earned paid sick leave under the requirements of the Department of Budget and Management.
  - d) Will not be returning to work.
  - e) Has, through intimidation, threat, or coercion, interfered with or attempted to interfere with the right of another employee to contribute or not to contribute, receive, or use donated leave, promised to confer or conferred an appointment, promotion, compensation, or other benefit, or effected or threatened to effect a reprisal, including the deprivation of an appointment, promotion, compensation, or other benefit, in connection with the right of another employee to contribute, receive, use or donate leave.
14. Appeals
  - a) An employee who appeals a denial of the use of donated leave shall submit a written appeal on the MS 406 form, which can be obtained from the Personnel Office. The appeal must be submitted to the Secretary of Budget and Management within 14 days of receiving notice of denial. The employee shall provide a copy of the appeal to the appointing authority.

- b) An appeal shall contain a statement of the reason the employee believes the denial should be overruled, and may include supporting documentation.

15. Application for Disability Retirement

An employee who has applied for disability retirement may use donated leave if the employee:

- a) has a serious and prolonged medical condition;
- b) satisfies the conditions of Section A.1;
- c) has exhausted all available earned leave;
- d) provides satisfactory medical documentation.

16. If an employee who receives donated leave does not use all of the leave received, the remaining hours of leave shall be automatically transferred to the State Employee's Leave Bank.

17. Donated leave used will be counted against any FMLA entitlement.

B. State Employee's Leave Bank

1. Membership

An employee is a member of the Leave Bank for two years from the date on which the employee:

- a) Voluntarily donates at least eight (8) hours of annual, personal, or sick leave to the Leave Bank.
- b) Has at least eight (8) hours of annual or personal placed in the Leave Bank as a result of forfeited unused annual or personal leave.

2. Leave Donations

- a) An employee may voluntarily donate the employee's unused annual, personal, or sick leave in increments of the employee's normal workday to the Bank during the annual open enrollment period. The open enrollment period for the Leave Bank will be held during the health insurance open enrollment. New employees have 60 days from the date of employment to join the Leave Bank. New employees will be allowed to donate a minimum of 8 hours of personal leave at this time. There is a 90-day waiting period for all requests from new employees.

- b) An employee may voluntarily donate unused sick leave to the Bank, but only to the extent that the donating employee has a sick leave balance of at least 240 hours after the donation.
- c) An employee who wishes to donate leave to the Bank shall complete and submit the MS 402 form, which may be obtained from the Personnel Office, indicating the type of leave and the number of hours of each type of leave that the employee is donating to the Bank.
- d) Within seven (7) days of receiving the MS 402 form, the appointing authority/designee shall review the employee's sick leave record and determine whether the condition specified in section B.2.b. of this Directive has been satisfied. If this condition has been satisfied, the Personnel Office shall forward the MS 401 to the Department of Budget and Management with a copy to the payroll office and to the employee.
- e) If the condition specified in section B.2.b. has not been satisfied, the appointing authority shall notify the donating employee who shall be given an opportunity to donate fewer hours of sick leave in order to maintain 240 hours after the donation, or earned annual and/or personal leave.

3. Procedure for Withdrawals of Leave from the Bank

- a) An employee who wishes to withdraw leave from the Bank must have donated leave to the Bank within the last two years of the request. There is an initial waiting period of 90 days for all new employees.
- b) The employee must complete Form MS 408 and have their health care provider complete Form MS 401. Both completed forms must be submitted to the Personnel Office. The employee shall make every effort to submit the request before the first day of leave requested. In extenuating circumstances, the Secretary shall accept late requests.
- c) The Personnel Office will date stamp the submitted forms and will verify or determine whether:
  - 1. The requesting employee has exhausted all available annual, personal, sick, and compensatory leave because of a serious and prolonged medical condition;
  - 2. There is sufficient medical documentation to establish the existence of a serious and prolonged medical condition.
  - 3. The amount of leave sought, when added to the amount of donated leave already received from other employees and from the Leave Bank will not exceed 2080 hours during the employee's entire State service.

4. The amount of leave being requested, when combined with all other forms of paid leave, will not be used for a continuous period that exceeds 16 months; and

5. The employee qualifies for use of earned paid sick leave under the requirements of the employee's personnel system.
6. Leave used from the Leave Bank will automatically be used against the employee's FMLA entitlement.

If the employee fails to satisfy any of these conditions, the Statute requires that the employee be denied the leave.

- d) If these conditions are satisfied, the employee's appointing authority/designee forwards the MS 401 and MS 408 to the Employee Relations Division of the Department of Budget and Management with a recommendation to the Secretary to grant or deny the request. A statement of the reasons for recommended denial and supporting documentation shall accompany a recommendation that the request be denied. The employee shall be given a copy of the recommendation.
- e) An employee who exhausts accumulated leave after submission of the proper paperwork, but before the Leave Bank request is evaluated shall be granted leave until the Secretary makes a determination on the request.
- f) If an employee is automatically granted leave and the Leave Bank request is subsequently denied, any granted leave shall be converted to leave without pay. The employee shall reimburse the State for the granted leave at a minimum rate of one-half of earned sick leave. At the employee's discretion, the employee may repay the granted leave with accrued annual, personal, compensatory or additional sick leave or by making cash payment.
- g) Approval for an eligible employee is discretionary, and denial may be based on any reason which is consistently applied and that is not illegal or unconstitutional. In evaluating the request, the Employee Relations Division will consider the following factors:
  1. A record of sick leave abuse by the employee;
  2. Insufficient medical documentation of a serious and prolonged medical condition;
  3. Unsatisfactory employee performance ratings;
  4. The amount of leave previously received from the Bank;
  5. Whether the employee qualifies for use of earned paid sick leave under the requirements of the employee's personnel system;
  6. Whether the employee will return to work; and
  7. Previous disciplinary actions within the last year.

- h) Within 30 days of receiving the MS 408 form, the Secretary shall issue a written determination approving or denying the request. Whenever the Secretary finds it necessary to refer the request to the State Medical Director, this period may be extended an additional 30 days.

- i) An employee whose request for leave is granted by the Secretary shall have the employee's leave balance adjusted within 14 days of the Secretary's determination.

#### 4. Reconsideration

- a) An employee whose request for leave from the Bank is denied by the Secretary may appeal the denial within 14 days of the denial by submitting the MS 406 form to the Secretary and requesting reconsideration.
- b) The request for consideration shall state the reasons the employee believes the Secretary's denial should be reconsidered and may be accompanied by supporting documentation.
- c) Within 14 days of receipt of the request for reconsideration, the Secretary shall issue a written decision granting or denying leave from the Bank. If the Secretary decides to grant leave from the Bank, a copy of the determination shall be forwarded to the employee and the Personnel Office.

#### C. Medical Documentation

- 1. Medical documentation submitted in connection with either the State Employee's Leave Bank and the State Employee's Leave Donation Program shall be treated as confidential medical information and shall be disclosed only to those individuals who need to know its contents as part of the review, evaluation and approval process.
- 2. Medical documentation shall be maintained in a separate medical file apart from the employee's medical file.
- 3. An employee who fails to maintain the confidentiality of medical information will be subject to disciplinary action, up to and including, termination.

#### D. Coercion, Intimidation and Threats Prohibited

Leave donations to the bank are strictly voluntary. An employee who, through intimidation, threat, or coercion, interferes with or attempts to interfere with the right of another employee to contribute or not contribute, receive, or use donated leave, promises to confer or confers an appointment, promotion, compensation, or other benefit, or effects or threatens to effect a reprisal, including the deprivation of an appointment, promotion, compensation, or other benefit in connection with the right of another employee to contribute, receive, use, or donate leave is subject to disciplinary action, up to and including termination.

#### E. Disability Retirement



An employee who has applied for disability retirement may receive leave from the Bank if the employee:

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- (1) Has a serious and prolonged medical condition;
- (2) Satisfies the conditions of Section B.1.;
- (3) Has exhausted all available earned leave;
- (4) Provides satisfactory medical documentation.

VI. RECISION: PID 50-32 dated October 1, 1994.

A handwritten signature in black ink, appearing to read "Randall S. Nero, Ph.D.", written in a cursive style.

Randall S. Nero, Ph.D.  
Director