



Coordinating Leave and Workers' Compensation Benefits

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THE BASICS




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Workers' Compensation Benefits



- WC is not a "leave" benefit.
 - State-imposed medical benefit coupled with income protection
- Employee may be entitled to all health care services required to treat injury.




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Temporary Income Benefits (TIBS) 

- Paid by the WC carrier
- Non-taxable
- Based on an employee's weekly wage
- May be as much as 70% of the pre-injury wage


TIBS are NOT the same as leave benefits paid by the district as wages.




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WC and Job Protection 


- Employee has no specific right to reinstatement to a particular position.
 - District is not required to hold a position open indefinitely
 - Position can be filled on a case-by-case basis because of legitimate business concerns
 - Atty. Gen. Op. JM 227 (1984)




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Discrimination Prohibited 


- Cannot discharge or discriminate against an employee for:
 - Filing a WC claim
 - Hiring a lawyer as a representative in a claim
 - Instituting a proceeding under the WC Act
 - Testifying in a WC proceeding




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Leave Benefit Provisions 


- Payment of wages on a full- or partial-day basis
- Job protection or rights to return to a position
- Payment of health insurance premiums

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Types of Leave 


<p>Paid Leave</p> <ul style="list-style-type: none"> • Full-day <ul style="list-style-type: none"> – State and local sick/personal – Sick leave pools/banks • Partial-day <ul style="list-style-type: none"> – Extended leave – Assault leave 	<p>Unpaid Leave</p> <ul style="list-style-type: none"> • Family and Medical Leave (FML) • Temporary disability • Leave of absence (LOA)
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Work-Site Poster Update 


- TASB HR Services federal poster updated in early 2009
- New posting requirements for GINA and revisions to the ADA included in EEOC supplemental notice
 - Supplement can be downloaded from EEOC Web Site free of charge
 - <http://www1.eeoc.gov/employers/poster.cfm>

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Work-Site Poster Update 


- Federal poster will be updated in Fall 2010 when changes relating to family military leave are released by the EEOC

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Common Questions

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Question One 


- Can leave benefits be used during WC absences?

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Answer One 

- An employee may elect to use sick/personal leave during a WC absence
 - (Labor Code §504.052)
- Sick or personal leave
 - Extended leave
 - Sick leave pool or bank


Use election form to document employee's choice.




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Answer One 


- The district may designate an unpaid leave during the absence
 - FMLA
 - Temporary disability leave




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Question Two 

- How much pay will an employee receive when using paid leave?




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Answer Two 

- An employee cannot receive more than 100% of the pre-injury wages when paid leave is **elected** and TIBS are paid.
- If the district **requires** the use of paid leave, then the injured worker receives pay and TIBS.


Involuntary election of leave results in employee receiving up to 175% of pre-injury wages.




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Question Three 


- What happens if the employee's election to use paid leave is not documented?




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Answer Three 


- It will be considered an involuntary use of leave.
- The employee will receive paid leave and TIBS.




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Question Four 


- What is offsetting?


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Answer Four 

- Offset policy—leave is used in fractional amounts to supplement TIBS
- No offset policy—employee can either...
 - Choose to use available paid leave and postpone TIBS
 - Receive TIBS and forego the use of available paid leave

Offsetting policy must be adopted by the board (See Local Policies CRE and DEC). Be sure practice and policy match.


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Answer Four 

- Example:


Pre-injury wage	\$720
TIBS payment	-\$504 (paid by WC carrier)
Offset	\$216* (paid through payroll)


***Offset is paid by the district and fractional amount of leave is deducted from accrued leave balance.**

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Question Five 


- What are the pros and cons of offsetting?


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Answer Five 

Pro—Provides an advantage to employees


- Provides employees with greater benefits for a longer period of time
 - Job protection
 - Payment of health insurance premiums
- For some employees TIBS is significantly less than their normal income and use of leave is a necessity


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Answer Five 


Con—Offsetting results in greater administrative costs for the district

- Offsetting requires case-by-case calculations
- Leave used may need to be recorded manually


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Question Six 


- How is assault leave paid?




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Answer Six 


- Assault leave must be coordinated with TIBS.
 - Required by Texas Education Code §22.003(b)
- Assault leave is paid in the form of a supplement (offset).




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Answer Six 

- WC is the first source of paid benefits.
- Combined total equals injured worker's pre-injury weekly wage.





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Answer Six 


- Example:
Pre-injury wage \$720
TIBS -\$504 (paid by WC carrier)
Assault leave pay **-\$216** (paid through payroll)


Statute requires offsetting of TIBS and assault leave—it is not a choice.

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Question Seven 


- Are there any new guidelines for applying assault leave?

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Answer Seven 


- Yes, the Commissioner of Education issued two decisions in March 2009 that provide new guidance and clarification.

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Answer Seven 

- An employee is entitled to assault leave only if **medical certification** demonstrates that:
 1. The job could not be done because of the injury;
 2. Returning to work would worsen an injury; **or**
 3. Additional days would facilitate the healing process


Tex. Comm'r of Educ. Decision No. COS-R10-0906
(March 5, 2009)




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Answer Seven 


- Assault leave can only be used for physical injuries, **not** psychological conditions that may occur as a result of the assault
 - Tex. Comm'r of Educ. Decision No. 017-R10-1006
(March 6, 2009)




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Question Eight 


- What happens if the district fails to offset assault leave?




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Answer Eight 

- Assault leave cannot reduce TIBS
 - Appeals Panel Decision 06173-S filed 10/20/06
- District pays assault leave at 100% of pre-injury wage **and**
- TIBS is paid by the WC carrier


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Answer Eight 

- Example:


Assault leave pay	\$720 (paid through payroll)
TIBS	<u>+\$504</u> (paid by WC carrier)
Total benefits paid	\$1,224


Failure to offset assault leave benefits provides an employee with a disincentive to return to work.

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Question Nine 


- Who is responsible for the payment of health insurance premiums?

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Answer Nine 


- Paid leave or FML
 - District continues to pay its portion of the premium
- Unpaid leave (not FML)
 - Employee is responsible for payment of **entire** premium

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Answer Nine 


- WC absence where no other leave is applied
 - Employee is responsible for payment of **entire** premium
- TIBS calculation does not include health or other insurance premiums
 - Employee must pay entire cost of premium


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Answer Nine 


- Paying for health insurance provides employee with an incentive to remain at home


Policy CRD (Local) addresses responsibility for payment of health insurance premiums.

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Question Ten 


- Can a workers' compensation absence be designated as FML?

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Answer Ten 


- FML can run concurrently with TIBS as long as:
 - Employee meets eligibility criteria
 - District designates the leave as FML
- Employees may elect to use accrued leave if they are receiving TIBS and on FML.
 - Op. Tex Att'y Gen. No JC-40, May 4, 1999

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Question Eleven 


- Does family and medical leave apply when an employee is assigned to modified duty?

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Answer Eleven 


- Employee is permitted, but not required to accept a modified-duty assignment under the FMLA
- Time spent performing modified-duty assignment does not count toward employee's leave entitlement


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Answer Eleven 


- Employee retains right to restoration while in modified-duty assignment
 - Right to restoration expires at the end of the 12-month FML year
- Job restoration right cease when 12 weeks of FML is exhausted


Best Practice: Establish and enforce time limits for modified-duty assignments.

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Question Twelve 


- We don't have a modified-duty program. Are we required to reinstate an employee following FML if they are not fully recovered?

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Answer Twelve 


- Employee released to return to work with restrictions:
 - Reinstatement under FML or temporary disability leave is not required if the employee cannot perform the essential job functions
 - If disability exists, reasonable accommodation may be required
 - Additional unpaid leave
 - Other accommodation

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Answer Twelve 


- Reinstatement following FML is required when employee can perform the essential job functions
- Intermittent or reduced-schedule leave must be granted if there is a medical necessity
- Time off counts toward 12 weeks of FML

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Question Thirteen 


- How should leave or absence be recorded on the service record?

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Answer Thirteen 


- Paid leave days count as days of service
- Unpaid leave days do not count
 - FML leave
 - Temporary disability leave
 - Workers' compensation absence (TIBS)

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Question Fourteen 


- What resources are available to assist with leave administration?


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Answer Fourteen 


HR Services Resources

- *The Administrator's Guide to Managing Leaves and Absences*
 - New edition released June 2009
- Upcoming workshops in Austin (TASB offices)
 - *Get a Grip on the Family and Medical Leave Act* (June 2, 2010)
 - *M.I.A.—Managing Inevitable Absences* (June 3, 2010)

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More Resources 


- TASB Risk Management Fund
 - Program Contacts get a myTASB user id and password at rmsmytasb@tasb.org
 - WC Manual
 - Fund Briefs
 - RTW Manual
 - Internet (non-secured) www.tasbrmf.org
 - Post Injury Earnings (PIE) Reporting Instructions
 - PIE Worksheet attached to online DWC-6
 - Election of paid leave forms

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Participant Questions 




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Contact Information 

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