

 0	Montana Operations Manual Policy	Category	Human Resources/ Employee Benefits
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Issuing Authority	Department of Administration Health Care and Benefits Division		
Sick Leave Fund and Direct Grant Policy			

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 (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 Fund, Direct Grants, or a combination of both in a 12-month period, even if the Employee has more than one Serious Health Condition during a 12-month period. See Example #4, Section VII. 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 may 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, unless an Employee's collective bargaining agreement permits increments of less than one half-hour to be used. In that case, sick leave hours may be rounded up to the nearest partial hour permitted by the Employee's collective bargaining agreement for a grant of sick leave hours from the Fund. For Direct Grants, both the donor and recipient must be covered by a collective bargaining agreement that permits use of sick leave hours in less than a one 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 Fund, Direct Grants, or a combination of both in a 12-month period. In addition to a total Contribution of 80 hours, an Employee may also contribute to the Fund any excess annual leave at risk of forfeiture. However, the Employee cannot contribute any excess annual leave at risk of forfeiture to a Direct Grant. 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 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. A Participating Employee may exceed the 80-hour limit to make a Contribution to the Fund as requested by the Department pursuant to Section X of this policy.
- E. Subject to Agency approval, an Employee may use sick leave obtained from the 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 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 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 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 the Employee's Serious Health Condition or providing necessary care to a spouse, child, or parent with a Serious Health Condition. See Section IV.E for more information.
 3. when the Employee has accrued sick leave or compensatory time available that accrued after the Employee began using sick leave from the 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 donor Employee's donation of sick leave hours and the recipient Employee's use of sick leave hours must occur during the same pay period. The employing Agency must submit the Direct Grant Form on or before the Friday preceding the payday of the affected payroll period. See Section VIII.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 XIII 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 must meet all the conditions below:
1. Met the 90-day qualifying period (QP) to take sick leave, as provided in 2-18-618, MCA.
 2. Have a Serious Health Condition or be providing 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, for each Serious Health Condition. 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. If the Employee works any partial (or full) Working Day(s) during the 2-week period, the 2-week period will start over on the regularly scheduled Working Day immediately following each partial or full Working Day that the Employee works. See Example 5. Section VII. Days worked during the 90-day QP may accrue to the 10 consecutive working day requirement.
 3. Used all available and usable accrued sick leave, annual leave, other accrued paid leave, and compensatory time. Usable means accrued leave of a minimum of a half hour in a leave category. Usable may be

defined by the terms of an Employee's collective bargaining agreement if that agreement permits use of accrued leave in smaller increments.

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, provide a physician's certification of a Serious Health Condition.
 7. To request an allocation 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. See Section IX for more information.
- B. Sick leave may be granted on an intermittent basis for the same Serious Health Condition.
- 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 Fund or a Direct Grant.

VII. Examples.

1. Intermittent Leave (Example 1). An Employee has a cancer diagnosis but can work regularly scheduled Working Days intermittently with days of leave for cancer treatments until the Employee completes the cancer treatments. The Employee continues to work regularly scheduled Working Days without need for intermittent use of sick leave days for several months. Then the Employee's cancer returns, requiring more treatment. The Employee does not need to satisfy another absence of 10 consecutive Working Days, because she has a recurrence of the same Serious Health Condition.
2. Intermittent Leave (Example 2). An Employee has a diagnosis of multiple sclerosis but can work regularly scheduled Working Days until the Employee experiences a flare up related to the multiple sclerosis diagnosis and then must work part-time or take intermittent days of leave to manage the condition. The Employee need only satisfy one absence of 10 consecutive Working Days, because her Serious Health Condition is a permanent condition.
3. Multiple Serious Health Conditions (Example 1). An Employee experiences the death of a close family member but resumes regularly scheduled Working Days after one week of an approved bereavement absence. Two years post-death, the Employee requests sick leave hours from the Fund and/or a Direct Grant for another absence related

to her ongoing depression because of the deceased family member. The Employee must satisfy a new 10 consecutive Working Day period because the Employee's depression represents a new Serious Health Condition.

4. Multiple Serious Health Conditions (Example 2). The Employee has a Serious Health Condition and begins her 10 consecutive Working Day period on January 13th, completing that period on January 24th. The Employee receives 160 sick leave hours from the Fund. The Employee then experiences a second Serious Health Condition, unrelated to the first Serious Health Condition. The Employee begins a second 10 consecutive Working Day period on June 9th and completes that period on June 20th. However, the Employee can only receive 80 sick leave hours from the Fund for the second Serious Health Condition, because the Employee is limited to a maximum of 240 hours in a 12-month period.
5. Work Hours During 10-Consecutive Working Day Period. The Employee has a Serious Health Condition and begins her 10 consecutive Working Day period on January 13th. On January 20th, the Employee logs into her laptop remotely and works 4 hours that day. Because the Employee cannot work any hours during the 10 consecutive Working Day period, the Employee must begin a new 10-consecutive Working Day period on January 21st.

VIII. Sick Leave Fund Procedures

- A. To request an allocation from the Fund, a Participating Employee or the Participating Employee's representative shall submit a completed Sick Leave Fund Grant Request 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 XIII for a description of the appeal process.
- D. The employing Agency shall submit the completed Sick Leave Fund Grant Request 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 31st, the completed Sick Leave Fund Grant Request Form must be submitted by the following Friday, February 7th. The completed Sick Leave Fund Grant Request 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.

IX. 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 Fund, a permanent or seasonal Employee shall:
 - 1. have qualified for and completed the 90-day QP to take sick leave, pursuant to Section 2-18-618, MCA (if donating sick leave), or have qualified for and completed the 180-day QP to use annual leave, pursuant to Section 2-18-611, MCA (if donating annual leave);
 - 2. submit a completed Sick Leave Fund Contribution 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 or annual leave, or a combination of both 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 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 leave, annual leave, or a combination of both as described in Section IX. 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 Fund Contribution Forms to the Department.
- 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 X;
 - 2. terminates employment with state government. If the termination is a Reduction in Force and the Employee is rehired within 2 years, the Employee remains a Participating Employee and does not need to make another initial Contribution; or
 - 3. resigns in writing from the Fund.

X. Sick Leave Fund Shortfall – Additional Employee Contributions

- A. The Department will cease all approvals of sick leave credits from the Sick Leave Fund and Direct Grant Contributions made by Participating Employees when the Fund balance falls below 5,000 hours. If this occurs, Participating Employees must make additional Employee Contributions as described in Section X.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 X.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 used the Fund within the previous 6 months, who are currently using the Fund, or who would have less than 40 sick leave hours after making 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 X.

XI. Direct Grant Procedures

- A. An Employee who chooses to contribute sick leave under the Direct Grant program (the donor Employee) shall submit a completed Direct Grant Form to the appropriate Agency staff.
- B. The donor Employee's Agency shall certify:
 - 1. the donor Employee has met the eligibility requirements in Section XII to make a direct grant; and
 - 2. the Agency deducted the appropriate hours from the donor Employee's sick leave account.
- C. If the recipient Employee is in a different Agency than the donor Employee, the donor Employee's Agency shall submit a copy of the Direct Grant Form to the recipient Employee's Agency. If the recipient Employee and donor Employee are both in the same Agency, the Agency shall follow the recipient agency procedures described in Section XI.D below.
- D. The recipient Agency shall certify that the recipient Employee meets the eligibility requirements in Section VI.
 - 1. If the recipient 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 Direct Grant 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 Direct Grant Form to the donor Employee's Agency to re-credit the donor 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 XIII for a description of the appeal process.
 - 3. Unused sick leave hours donated by the donor Employee will be re-credited to the donor Employee's sick leave balance. A recipient Employee may not retain unused sick leave hours in the recipient Employee's sick leave balance.
- E. The donation by the donor Employee and the use of those hours by the recipient Employee must occur during the same pay period.

XII. 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 QP 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 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.

XIII. 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.

XIV. 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 Fund or of accrued annual leave an Employee donates directly to the 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 permanent full-time or part-time 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. A permanent seasonal employee is 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 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 during the prenatal period, delivery and post-partum period, miscarriage, abortion, or other treatment. To extend leave for a maternity-related disability beyond the first 6 weeks, either the Employee or new baby must have a Serious Health Condition. Alternatively, a Serious Health Condition may be a condition incurred by the Employee during the prenatal period that may require bedrest. If so, the combined prenatal and post-partum periods may result in an extension of the maternity-related disability.

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. A recognized holiday includes the floating holiday and any banked holiday(s).

XV. 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