

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

RELATES TO: KRS 211.170(1), (2), 212.170(4), 212.870, Chapter 337, 29 C.F.R. Part 825, 29 U.S.C. 206

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures of the local health department personnel program. This administrative regulation establishes work hours, leave, and compensatory time provisions for employees of local health departments.

Section 1. Hours of Work. (1) The normal work week shall consist of thirty-seven and one-half (37.5) hours per week.

(a) The appointing authority shall establish the hours and days of work for the agency or for specific employees.

(b) The work schedule may be changed by the appointing authority to provide for flexibility in meeting particular work requirements of the agency or specific employees whose schedules may require them to work different hours.

(2) Hours worked in excess of the thirty-seven and one-half (37.5) hours during the established work week shall be:

(a) Approved by the appointing authority; and

(b) Subject to compensatory time and overtime provisions of this administrative regulation.

(3) The standard pay period shall consist of seventy-five (75) hours.

(4) An appointing authority, with department approval, may establish a position having special conditions of employment based on the needs of the agency.

(5) The employee who requests and receives consideration for special conditions shall acknowledge acceptance of the special conditions in writing.

(6) Special conditions may include the following:

(a) Earning annual leave and sick leave at a rate based on the hours worked;

(b) An arrangement for handling nonwork time that may occur with the specific job responsibilities.

Section 2. Earning of Annual Leave. (1) Except for a temporary or emergency employee, a full-time employee shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	3.5 hours per pay period/91.0 hours per year
5 to 10 years	4.4 hours per pay period/114.4 hours per year
10 to 15 years	5.2 hours per pay period/135.2 hours per year
15 to 20 years	6.1 hours per pay period/158.6 hours per year
20 years or more	7.0 hours per pay period/182 hours per year

(2) Annual leave for a full-time employee shall not accrue unless the employee has been in pay status at least thirty-seven and one-half (37.5) hours of the standard pay period. The employee

shall be credited with additional leave credit upon the first day of the pay period following the pay period in which the leave was earned.

(3) Except for a temporary or emergency employee, a part-time employee, who is designated as serving on a part-time 100 hour basis and is in pay status at least twenty-three (23) hours each pay period, shall earn annual leave credit at the following rate:

Years of Service	Annual Leave Hours Earned Per Pay Period/Per Year of Twenty-six (26) Pay Periods
0 to 5 years	2.1 hours per pay period/54.6 hours per year
5 to 10 years	2.6 hours per pay period/67.6 hours per year
10 to 15 years	3.1 hours per pay period/80.6 hours per year
15 to 20 years	3.6 hours per pay period/93.6 hours per year
20 years or more	4.2 hours per pay period/109.2 hours per year

(4) In computing years of total service for determining the rate of earning annual leave for designated part-time 100 hour employees, only those months shall be used during which the employee was designated as a full-time, part-time 100 hour, or was on educational leave with pay.

(5) An employee who has retired from a position covered by a state retirement system, is receiving retirement benefits, and returns to an agency, shall not receive credit for months of service prior to retirement.

(6) An employee who has resigned from one agency and returns to another agency as an original appointment shall not receive credit for months of service prior to resignation.

(7) Annual leave shall not accrue unless an employee is working or on authorized leave with pay. Annual leave shall not accrue if an employee is on authorized educational leave with pay.

(8) The maximum amount of annual leave earned by a full-time employee that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Leave Earned by Full Time Employees
0 to 5 years	225.0 hours
5 to 10 years	277.5 hours
10 to 15 years	337.5 hours
15 to 20 years	390.0 hours
Over 20 years	450.0 hours

(9) The maximum amount of annual leave for a designated part-time 100 hour employee who works an average of 100 hours per month that may be accumulated and carried forward to the next calendar year shall not exceed the following amounts:

Years of Service	Maximum Amount of Annual Hours Earned by Designated Part-time 100 Employees
0 - 5 years	120 hours
5 - 10 years	148 hours
10 - 15 years	180 hours
15 - 20 years	208 hours
Over 20 years	240 hours

(10) Except as provided for in Section 3(8) of this administrative regulation, annual leave earned in excess of that which is allowed to be accumulated shall be converted to sick leave and credited during the first pay period following the end of the calendar year. Annual leave shall not be granted in excess of that earned.

Section 3. Use of Annual Leave Credit. (1) An employee who has accumulated annual leave credit, upon timely request and subsequent approval of the appointing authority, shall be granted leave subject to the operating requirements of the agency.

(2) An employee shall not be charged with annual leave for absence except on a day upon which they would otherwise work and receive pay.

(3) Absence for a fraction or part of a day that is chargeable to annual leave shall be charged in fifteen (15) minute periods.

(4) An employee shall be paid a lump sum for accumulated annual leave, not to exceed the maximum amounts established in Section 2 of this administrative regulation, if separated by proper resignation, layoff, retirement, or change from full-time or part-time 100 hour to part time. Following payment of annual leave, leave remaining after the payment of the maximum provided in Section 2 of this administrative regulation shall be removed from the balance.

(5) Upon the death of an employee, the employee's estate shall be entitled to be paid for the unused portion of the employee's accumulated annual leave.

(6) Annual leave shall not be advanced or taken until it is earned.

(7) An absence due to sickness, injury, or disability in excess of accumulated sick leave, may be charged against annual leave if approved by the appointing authority.

(8) An employee who has accumulated annual leave in excess of 275 hours may request payment of an amount of annual leave not to exceed seventy-five (75) hours during the fiscal year of the agency. The requested annual leave payment, if approved by the appointing authority, shall not reduce the employee's balance of annual leave below 275 hours and shall be paid in a manner convenient to the agency.

(9) An appointing authority may require an employee who has a balance of compensatory leave hours to use compensatory leave before the employee's request to use annual leave balance is granted, unless the employee's annual leave balance will exceed the maximum number of hours that may be carried forward pursuant to Section 2(8) and (9) of this administrative regulation.

Section 4. Earning of Sick Leave. (1) A full-time employee, except an emergency employee,

shall earn sick leave at the rate of three and one-half (3.5) hours per pay period.

(a) An employee shall have worked or been in pay status for at least thirty-seven and one-half (37.5) hours of the seventy-five (75) standard hours in each pay period in order to accumulate sick leave.

(b) The employee shall be credited with sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(2) An employee designated as a part-time 100 hour employee, except an emergency employee, who is in pay status at least twenty-three (23) hours in a pay period shall earn sick leave at the rate of two and one-tenth (2.1) hours per pay period. A part-time 100 hour employee shall be credited with additional sick leave upon the first day of the pay period following the pay period in which the leave was earned.

(3) A full-time employee completing ten (10) years of total service with an agency shall be credited with seventy-five (75) additional hours of sick leave.

(4) An employee designated as a part-time 100 hour employee completing ten (10) years of total service with an agency shall be credited with forty-five (45) additional hours of sick leave.

(5) A full time employee completing 240 months of total service with one (1) or more agencies shall be credited with an additional seventy-five (75) hours of sick leave.

(6) An employee designated as a part-time 100 hour employee completing 240 months of total service with one (1) or more agencies shall be credited with forty-five (45) additional hours of sick leave.

Section 5. Uses of Sick Leave Credit. (1) The appointing authority, upon proper request, may grant sick leave with pay to a full-time or designated part-time 100 hour employee with sufficient leave credit, if the employee:

(a) Receives medical, psychiatric, dental, or optical examination or treatment;

(b) Is disabled by sickness or injury;

(c) Is required to provide care for a sick or injured spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law;

(d) Would jeopardize the health of others at his or her workstation post because of exposure to a contagious disease;

(e) Has lost by death a spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step-sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; or

(f) Is required to take the employee's spouse, child, step-child, parent, step-parent, brother, step-brother, sister, step sister, grandparent, step-grandparent, grandchild, step-grandchild, mother- or father-in-law, or daughter- or son-in-law; for medical, psychiatric, dental, or optical examination or treatment.

(2) Accumulated sick leave may be granted for death in the employee's family, as described in subsection (1) of this section, and shall be limited to three (3) days or a reasonable extension at the discretion of the appointing authority.

(3) An employee shall file a written request for sick leave with or without pay within a reasonable time. An employee shall request advance approval for sick leave for medical, dental or optical examination and for sick leave without pay.

(4) Except for an unexpected absence from work because of an illness, the employee shall notify the employee's supervisor or other designated person. Failure to do so in a reasonable time period may be cause for denial of the sick leave for the period of absence or for disciplinary action.

(5) An appointing authority may, for good cause and on notice, require an employee to supply

supporting evidence in order to receive sick leave for the days or hours sick leave that is requested. A supervisor's or employee's certificate may be accepted, but a medical certificate may be required signed by a licensed practitioner and certifying to the incapacity, examination, and treatment during the time for which sick leave was taken. An appointing authority may grant sick leave if the application is supported by acceptable evidence.

(6) If an employee requests leave in excess of five (5) working days, a statement from the employees' licensed practitioner shall accompany the request for leave. The statement shall contain the following:

(a) The licensed practitioner's judgement that the employee is incapable of performing the essential duties of the job;

(b) Estimate of the length of time that the employee's illness or disability will last;

(c) Restrictions which would render the employee incapable of performing the essential duties of the job; and

(d) Recommendation for special considerations to accommodate the employee once released to return to work.

(7) An appointing authority may place an employee on sick leave if:

(a) The employee's health might jeopardize others;

(b) The employee's health prevents performance of his duties and responsibilities;

(c) The employee fails to produce a satisfactory medical certificate upon request; or

(d) The employee exhibits behavior that disrupts the agency's ability to function in providing services or that might endanger the employee or others.

(8) Absence for a fraction or part of a day that is chargeable to sick leave shall be charged in fifteen (15) minute periods.

(9) An employee who is transferred or otherwise changed from one (1) agency to another shall retain accumulated sick leave in the receiving agency.

(10) A former employee who is reinstated or reemployed shall have his previous rate of earning annual leave and unused sick leave balances reinstated upon successful completion of probation, if applicable.

(11) Sick leave may be utilized in cases of absence due to illness or injury for which worker's compensation benefits are received for lost time to the extent of the differences between these benefits and the employee's regular salary.

Section 6. Family and Medical Leave. An appointing authority shall comply with the requirements of the Family and Medical Leave Act (FMLA) of 1993, 29 U.S.C. 2601 et seq., Pub.L. 103-3, and the federal regulations implementing the Act, 29 C.F.R. Part 825.

Section 7. Maternity Leave. (1) The appointing authority shall grant a maternity leave of absence to an employee because of pregnancy or the adoption of a child. Maternity leave shall not exceed twelve (12) weeks, unless the appointing authority approves additional maternity leave. However, the total leave shall not exceed twenty-six (26) pay periods.

(2) The employee on maternity leave shall use accumulated sick leave credit if available, only for the period of time medically necessary to be absent from work as indicated by the certification of a licensed practitioner.

(a) If sick leave is not available, the employee shall use accumulated annual or compensatory leave if available.

(b) If leave credit is exhausted, the employee shall be placed on leave without pay.

(3) Accumulated annual and compensatory time shall be used for maternity leave that extends beyond the period of absence that is medically necessary for the employee as certified by the employee's medical practitioner.

(4) The employee shall submit a written request for maternity absence, which shall include a statement from a licensed practitioner indicating the expected date of delivery.

(a) The request shall be submitted to the appointing authority as soon as practical to allow for adjustments in the work schedule during the employee's absence.

(b) Additional information from the employee's licensed practitioner may be required if there are complications and the period of absence begins sooner than agreed, extends further than agreed, or requires the use of maternity leave beyond twelve (12) weeks.

Section 8. Workers' Compensation. (1) If an absence is due to illness or injury for which workers' compensation benefits are received, accumulated sick or annual leave may be used to maintain full salary.

(2) If paid leave is used to maintain regular full salary, workers' compensation pay benefits shall be assigned to the agency for the period of time the employee received paid leave.

(3) The employee's sick and annual leave shall be immediately reinstated to the extent that workers compensation benefits are assigned. An employee shall not receive paid sick and annual leave and workers compensation pay for the same period of time.

Section 9. Sick Leave Without Pay. (1) An appointing authority may approve sick leave without pay upon appropriate request of an employee for reasons provided for in this section and in Section 7 of this administrative regulation.

(2) An employee shall have used accumulated annual, sick, and compensatory leave credit prior to approved leave without pay.

(3) The amount of continuous sick leave without pay approved by an appointing authority shall not exceed twenty-six (26) pay periods.

(4) If an employee approved for leave with pay exhausts accumulated annual, sick, and compensatory leave credit, the employee shall be placed on sick leave without pay, if the total absence does not exceed twenty-six (26) pay periods.

(5) The appointing authority may require periodic statements from a licensed practitioner during the sick leave without pay period attesting to the employee's inability to perform the essential functions of the employee's job duties with or without reasonable accommodation.

Section 10. Return from Sick Leave With or Without Pay. (1) At the termination of sick leave with pay not exceeding thirteen (13) pay periods, the appointing authority shall return the employee to his former position. At the termination of sick leave with pay exceeding thirteen (13) pay periods, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstance permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(2) If an employee on approved sick leave without pay for less than twenty-six (26) pay periods has given notice of his ability to resume his duties, the appointing authority shall return the employee to a position for which he is qualified and which resembles his former position as closely as circumstances permit. If the employee is unable to perform the essential functions of the position and there is no other vacant position for which the employee qualifies and is able to perform, the employee may be laid off.

(3) An employee shall be considered to have resigned if the employee:

(a)1. Has been on continuous sick leave without pay for twenty-six (26) pay periods;

2. Has been requested by the appointing authority in writing to return to work at least ten (10) days prior to the expiration of sick leave; and

3. Is unable to return to work; or

- (b)1. Has been given priority consideration by the appointing authority for a vacant position with the agency, for which the employee qualifies and is capable of performing its essential functions with or without reasonable accommodation; and
2. The appointing authority has been unable to place the employee in a vacant position.

Section 11. Sharing of Sick Leave. (1) An employee of the local health department who has accrued a sick leave balance of more than seventy-five (75) hours may, with the approval of the appointing authority, request the transfer of a specified amount of the employee's sick leave balance in excess of seventy-five (75) hours to another named employee of the local health department who is authorized to receive sick leave.

(2) The appointing authority may approve the amount of sick leave received under this section, if any, if:

(a) The employee or a member of his immediate family suffers from a medically certified illness, injury, impairment, or physical or psychiatric condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;

(b) The employee's need for absence and use of leave are certified by a licensed practitioner; and

(c) The employee has exhausted his accumulated sick leave, annual leave, and compensatory leave balances.

(3) Leave may be transferred from an employee of one agency to an employee within the same agency or may be transferred from an employee of one (1) agency to an employee of another agency. The department shall maintain records of leave transferred between employees and the utilization of transferred leave.

(4) If an employee is on leave transferred under this section, he shall receive the same treatment with respect to salary, wages, and employee benefits.

(5) Salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave. Leave transferred under this section which remains unused shall be returned, on a prorated basis, to the employees who transferred the leave if the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.

(6) An employee shall not intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, either directly or indirectly, another employee for the purpose of interfering with the employee's right to voluntarily contribute leave as authorized under this section.

Section 12. Court Leave. An employee shall be entitled to a leave of absence, without loss of pay or time, for each day during which the employee is subpoenaed by a court to serve as a juror or witness, except in a case where the employee or a member of the employee's family is a party plaintiff. If relieved from duty as a juror or witness during normal working hours, the employee shall return to work. An employee shall retain the fees earned while serving as a potential juror.

Section 13 Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from duty without the loss of pay or time to serve under orders on training duty for a period of up to ten (10) working days, not to exceed seventy five (75) hours in any one (1) federal fiscal (October 1 to September 30) year. The appointing authority, before granting military leave, may require a copy of the orders requiring the attendance of the employee.

(2) The appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of active duty not to exceed six (6) years. Accumulated annual leave and compensatory leave may be paid in lump sum at the request of the employee, upon being placed on leave.

(3) A Part Time 100 or Full Time status employee, who is a spouse or a member of the U.S. Armed Forces, including a member of a state National Guard or a Reserve component on federal duty, shall receive one (1) day off, with pay, from work when the member is deployed and one (1) day off, with pay, from work when the member returns.

Section 14. Voting Leave. The appointing authority shall allow each employee four (4) hours to vote, if requested in advance. The absence shall not be charged against accumulated leave.

Section 15. Special Leave of Absence. (1) An appointing authority may grant special leave for education, training or for other circumstances.

(2) Leave may be granted for a period not to exceed twenty-six (26) pay periods.

(3) Leave may be granted with or without pay.

(4) Leave for attendance at a college, university, vocational or business school shall be for training in subjects that:

(a) Relate to the employee's work; and

(b) Will benefit the agency.

Section 16. Special Leave for Investigative Purposes. (1) An appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct.

(2) Leave shall not exceed thirty (30) working days.

(3) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave.

(4) If the investigation reveals no misconduct by the employee:

(a) The employee shall be made whole for the period of the leave; and

(b) Records relating to the investigation shall be purged from agency files.

(5) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. Notification shall be made to the employee, whether the employee has remained with the agency, or has voluntarily resigned during the interim between being placed on special leave for investigative purposes and the completion of the investigation.

Section 17. Absence Without Leave. (1) An employee who is absent from duty without approval shall report the reason for the absence to the employee's supervisor immediately.

(2) Unauthorized or unreported absence shall be considered absence without leave and deduction of pay may be made by the appointing authority for each period of absence.

(3) Absence without leave may constitute grounds for disciplinary action.

(4) An employee who has been absent without leave or notice to the supervisor for more than three (3) working days shall be considered to have resigned the employee's position.

Section 18. Holidays. (1) Agency full-time employees shall be given a holiday on the following days:

(a) The first day of January and one (1) extra day;

(b) The third Monday in January;

(c) One-half (1/2) day for Good Friday (3.75 hours);

(d) The last Monday in May;

- (e) The fourth day of July;
- (f) The first Monday in September;
- (g) The 11th day of November;
- (h) The fourth Thursday in November plus one (1) extra day;
- (i) The 25th of December and one (1) extra day; and
- (j) Presidential election day.

(2) If a day enumerated in subsection (1) of this section falls on a Saturday, the preceding Friday shall be observed as the holiday. If the day enumerated falls on a Sunday, the following Monday shall be observed as the holiday. If an extra day is provided for it shall be observed as stated by the department.

(3) A full-time employee shall be in pay status on the work day prior to the holiday in order to receive the holiday benefit.

(4) Full-time exempt employees required to work on a holiday shall accrue compensatory time for the time worked.

Section 19. Absences Due to Adverse Weather. (1) An employee who chooses not to report to work, or who leaves early, in the event of adverse weather conditions, shall have the absence:

- (a) Charged to annual leave; or
- (b) Taken as leave without pay, if annual and compensatory leave has been exhausted.

(2) An employee who is on prearranged annual, compensatory, or sick leave shall charge leave as originally requested.

(3) If catastrophic, life-threatening weather conditions occur, such as that created by hurricane, tornado, flood, or blizzard, and it becomes necessary for authorities to order evacuation or shut-down of the place of employment, the following provisions shall apply:

(a) An employee who is required to evacuate or who would report to a location that has been shut down shall not be required to make up the time lost from work during the period officially declared hazardous to life and safety.

(b) An employee who is required to work in an emergency situation shall be compensated pursuant to Section 20 of this administrative regulation.

Section 20. Earning of Compensatory Time. (1) An employee determined to be exempt under the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor Law, KRS Chapter 337, authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours of duty in one (1) week shall accumulate compensatory time in fifteen (15) minute periods for excess time worked. The maximum amount of compensatory time accumulated shall be 200 hours.

(2) An employee shall have the prior approval of the appointing authority or the employee's immediate supervisor before compensatory leave may be earned.

(3) A nonexempt employee authorized by the appointing authority to work in excess of the prescribed thirty-seven and one-half (37.5) hours shall be paid at the employee's current salary for each hour not subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 206, and Kentucky Wage and Labor Law, KRS Chapter 337.

Section 21. Using Accumulated Compensatory Time. (1) An employee who has accrued compensatory time shall be permitted by the appointing authority to take compensatory time off if practical and upon proper request by the employee.

(2) An employee who has accumulated at least thirty (30) hours of compensatory time may be paid for the accumulated leave by the appointing authority upon written request. If payment is approved by the appointing authority, it shall be at the employee's regular rate of pay and in thirty

(30) hour increments.

(3) If an employee has accumulated the maximum amount of compensatory leave, the appointing authority shall pay the employee for at least fifty (50) hours of accumulated compensatory leave at the employee's regular rate of pay and shall reduce the employee's compensatory leave balance accordingly.

(4) Upon separation from service or transfer to another agency, unused compensatory time shall be reimbursed in a lump sum payment to the employee.

(5) Upon the death of an employee, the employee's estate shall be paid for unused accumulated compensatory time. (19 Ky.R. 2774; 20 Ky.R. 377; eff. 9-3-1993; 21 Ky.R. 593; eff. 9-21-1994; 22 Ky.R. 1164; 1652; eff. 4-5-1996; 24 Ky.R. 2210; 25 Ky.R. 118; 578; eff. 8-19-1998; 27 Ky.R. 2263; 2816; eff. 4-9-2001; 37 Ky.R. 1791; 2177; eff. 4-1-2011.)