



## State of Delaware Department of Human Resources

### DONATED LEAVE POLICY & PROCEDURE

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| <b>Effective Date:</b> December 28, 2017                       | <b>Supersedes:</b> Amended State of Delaware Donated Leave Program (04/08) |
| <b>Application:</b>  | <b>Merit Rule:</b> Chapter 5   |
| <b>Authority:</b> Del. Code Title 29, Chapter 59, Section 5956 | <b>Revised:</b> December 20, 2017  |

#### POLICY STATEMENT

The Donated Leave Program is designed to aid employees suffering from any illness or injury to the employee or to a member of an employee's family which is diagnosed and certified by the physician as rendering the employee or the member, of the employee's family unable to work; or in the case of family member who does not work, the medical equivalent of "unable to work" for a period of greater than 5 calendar weeks by enabling them to draw upon sick and annual leave donated by other employees. Employees may donate accrued sick and annual leave directly to other specified employees suffering from illnesses pursuant to the terms and conditions set for by the Delaware Code Title 29, Chapter 59, §5956. They may also donate to the Donated Leave Bank which eligible employees may draw upon. An employee who is covered by a collective bargaining agreement may donate leave to, or receive donations of leave from, an employee or officer who is not covered by a collective bargaining agreement.

An employee may donate up to one half their yearly accrual<sup>1</sup> of sick leave per year without having to match with annual leave. An employee may also donate additional amounts of sick leave in excess of one half their yearly sick leave accrual per year, however, such donations must be matched on a ratio of two hours sick leave per one hour annual leave.

#### DEFINITIONS

**Illness:** is defined as any illness or injury to the employee or to a member of an employee's family which is diagnosed and certified by the physician as rendering the employee or the member of the employee's family unable to work; or in the case of a family member who does not work, the medical equivalent of "unable to work" for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 calendar days or more each, resulting from the same or related medical condition and occurring within any 12 consecutive month period, shall be considered the same period of disability.

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<sup>1</sup> Sick and annual leave for 37.5 hour and 40 hour schedules accrue in accordance with Merit Rules 5.2 and 5.3.

**Family member or member of any employee's family:** an employee's spouse, son, daughter, or parent who resides with the employee and who requires personal attendance of the employee during the family member's illness or injury.

**Donated Leave Review Committee:** will help manage the Donated Leave Bank. The committee will recommend which leave request should receive priority when there is insufficient leave time available in the Leave Bank to honor all requests. The committee is recommended by the Secretary of DHR and consists of three members; agency representative, employee representative and DHR representative.

## **ELIGIBILITY**

Before receiving donated leave time, the requesting employee shall: (1) have been a State officer or employee for at least 6 months prior to the request; (2) have used all of his or her sick days and half of his or her annual leave; however, when the donated leave time is for the illness of a family member, the employee must have used all of his or her sick days and annual leave; and (3) have established medical justification for such receipt, which must be renewed every 30 days.

## **AGENCY RESPONSIBILITIES**

- Review employee's request for Donated Leave and approve or deny based on information provided.
- Review medical certifications every 30 days for request to extend Donated Leave approvals.
- Process Donated Leave calculation worksheets with direct donations received and pay employee accordingly.
- Maintain accurate documentation of requests, donations and payment for auditing purposes.
- Distribute agency solicitation for donated leave to all agency staff upon review and approval of request.
- Distribute statewide DHR requests for donated leave to all agency staff upon receipt.

## **DEPARTMENT OF HUMAN RESOURCES RESPONSIBILITIES (DHR)**

- Maintain the Donated Leave Bank including processing donations and approving funds for disbursement.
- Send statewide donated leave solicitations to the designated human resources staff upon request from agencies.
- Provide guidance regarding administration of the program.
- Audit the program and individual cases as needed.

## **EXCLUSIONS OR EXCEPTIONS**

- Section 42 of the FY01 Budget Act eliminated the restriction of an employee making a donation within the last six months prior to retirement from State employment.
- Employees must provide information on all wage replacement received or for which they are being considered on the DL-1 Form (Social Security, Workers Compensation Personal Injury Protection, Short-Term Disability, etc.).

- Donated Leave is not to be granted for any wages already paid through a wage replacement program such that total wages from any source would exceed 100% of employee's base wages.
- Donated Leave is not to be used to pay hours/wages already determined to be an offset under the Short-Term Disability Program.
  - *Example: An employee receiving 80% wage replacement through Personal Injury Protection (PIP) to whom the Short-Term Disability (STD) program gives 10% wage replacement could only request Donated Leave for the 10% wages not only already received through the PIP and STD wage replacement programs.*
- Donated leave is not to continue following the STD calendar day elimination period until the employee's claim has been approved and the employee continues to be in an approved status. Upon approval of the employee's STD claim and while the employee remains in an approved status, the employing agency may apply donated leave retroactively.
- Requests for Donated Leave will not be granted for absences prior to a year of the date of the request.

## **PROCEDURES**

### **Solicitation for Donated Leave**

1. After receiving authorization from the employee, the agency will first solicit Donated Leave donations within their own agency. Employees must complete the Donated Leave application, including the DL-4 (Authorization to Release Information for Solicitation Purposes.) Solicitations must comply with HIPAA regulations and not include any personal health information. Solicitations should follow the format provided on the DHR website and state only that the employee is out of work due to an illness or injury.
2. If sufficient donations have not been received after 15 calendar days from agency solicitation, the recipient's agency shall request DHR to send out a single statewide solicitation. The email request must contain the verbiage to be included in the statewide solicitation. A statewide solicitation will be sent upon request from the agency. The receiving agency shall process all donations received through internal donations or as a result of a statewide solicitation. No documentation should be sent to DHR unless requesting Statewide Donated Leave Bank hours.
3. If sufficient donations have not been received after 15 calendar days, the recipient's agency shall advise the employee that the agency may submit a request to DHR for Donated Leave Bank hours.

### **Donated Leave Bank Request**

An agency may request donated leave from the Donated Leave Bank when there are insufficient donations resulting from the internal and statewide solicitations. DHR shall distribute funds from the Donated Leave Bank upon approval by the Donated Leave Review Committee, as requested based on the availability of funds.

1. Agencies must request Donated Leave Bank hours in writing at [class\\_comp\\_hrm@state.de.us](mailto:class_comp_hrm@state.de.us).
2. The agency is required to attach copies of the DL-1 to DHR, along with the Donated Leave calculation worksheets for each pay period Leave Bank hours are being requested.
3. DHR will submit the request for Donated Leave Bank hours to the Donated Leave Review Committee for their review and recommendation. DHR Cabinet Secretary, or designee, shall have final approval authority.
4. DHR will notify the agency when the Donated Leave Bank request has been approved at which time hours may be posted to the employee's account.
5. If an agency receives a direct donation internally for one of their eligible employees after the time the employee has been approved for Donated Leave Bank hours and if the employee is no longer in need of these additional hours, the hours from the Donated Leave Bank must be returned to DHR at [class\\_comp\\_hrm@state.de.us](mailto:class_comp_hrm@state.de.us).

**Note:** On the Donated Leave Calculation Worksheet, a box has been added under Short-Term Disability for all other wage replacement programs. Agencies must designate the wage replacement program and enter the hour equivalent of wage replacement received through the program.

### **Donated Leave Bank Donations**

1. State agency employees wishing to make donations to the Donated Leave Bank must complete Part I of the DL-3 (Application to Make a Direct Donation to the Donated Leave Bank).
2. The employee's Supervisor or Division Director must complete Part II of the DL-3 and the employee's Human Resources or Payroll Office must complete Part III.
3. Forms must be forwarded to the DHR address listed on the DL-3. DHR will complete the form, return it to the agency, post and distribute the Donated Leave Bank hours as requests are received.

**Note:** The recipient's agency will convert the donated leave into cash value at the donor's rate of pay, shall reconvert the cash value to hours of leave at the recipient's rate of pay, and then credit the recipient's account for the equivalent hours.

### **FORMS ASSOCIATED WITH THIS POLICY**

- DL-1 – Request for Donated Leave and Physician's Statement of Disability
- DL-2 – Request to Make a Direct Donation
- DL-3 – Application to Make a Direct Donation to the Donated Leave Bank
- DL-4 – Authorization to Release Information for Solicitation Purposes
- Solicitation Letter on Behalf of the Employee SB 28 Language

- Solicitation Letter on Behalf of Immediate Family Member SB 253
- Agency Checklist of Steps for Processing Donated Leave Requests
- Donated Leave Calculation Worksheet

This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law.