

Administrative Head of State Agency, Salary of

Applies to:

Administrative head of each state agency in the executive or judicial branch of state government if the administrative head's salary is established by the General Appropriations Act (GAA).

Sources:

TEX. GOV'T CODE ANN. §§ 658.001(2), 659.021 (Vernon Supp. 2000).

Discussion:

The administrative head of a state agency whose salary as administrative head is established by the GAA may not receive a salary higher than the established salary, even if the administrative head performs duties assigned to a position title classified in the state's position classification plan that is assigned to a salary group that would pay a higher salary, unless the GAA specifically provides that the higher salary may be received.

For this purpose, **state agency** means:

- A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000); or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the judicial branch.

Classified Salary Rates

Applies to:

Each state agency or other state entity subject to the Position Classification Act (PCA).

Source:

TEX. GOV'T CODE ANN. § 654.014(b) (Vernon Supp. 2000).

Discussion:

Each state agency or other state entity subject to the PCA may determine, at the time an individual is initially employed by the entity in a classified position, the individual's salary rate within the applicable salary group for the individual's classified position.

Demotions

Applies to:

Each position classified under the state's position classification plan, but only to a state employee who is employed in the executive or judicial branch of state government. See the discussion later in the guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252, 659.257, 815.208(e) (Vernon Supp. 2000).

Discussion:

In the following, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

A demotion is an employee's change in duty assignment within a state agency from one classified position to another classified position that is in a salary group with a lower minimum salary rate.

When an employee is demoted to a position in a lower salary group in Salary Schedule A of the General Appropriations Act (GAA), the employee will receive a salary rate at least one step below the rate the employee received before demotion.

When an employee is demoted from Salary Schedule B or C of the GAA to a position in Salary Schedule A of the GAA, the employee shall receive a step rate that is at least 3.4 percent below the rate the employee received before demotion.

When an employee is demoted within Salary Schedule B of the GAA or from Salary Schedule A or C of the GAA to Salary Schedule B of the GAA, the employee will receive a salary rate of at least 3.4 percent below the rate the employee received before demotion.

When an employee is demoted to a position in a lower salary group in Salary Schedule C of the GAA or from Salary Schedule A or B of the GAA to Salary Schedule C of the GAA, the employee will receive the rate set in the schedule for that salary group.

A state agency is not required to reduce an employee's salary if:

- The employee accepts a position in another classification in a lower salary group in lieu of a layoff under a reduction in force; or
- The employee is selected for another position in a classification in a lower salary group as a result of applying for the position.

An employee demoted according to the preceding paragraph may not receive a salary rate that exceeds the maximum rate of the lower salary group. In addition, an employee demoted because of the employee's acceptance of a position in lieu of a layoff under a reduction in force may not receive a salary rate that exceeds the employee's salary rate before the demotion. Under no circumstances may the employee be paid more than the maximum of the lower salary group.

If an employee applies for and is selected for a position in a lower salary group, it is possible for the employee's step rate to increase, decrease, or stay the same. Under no circumstances may the employee be paid more than the maximum of the lower salary group.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of demotions to the extent the ERS board of trustees determines an exemption is necessary for performance of fiduciary duties.

Direct Deposit

Applies to:

Each state agency or institution of higher education whose payments of compensation are made through electronic funds transfers initiated by the Comptroller.

Sources:

TEX. GOV'T CODE ANN. § 403.016 (Vernon Supp. 2000); 34 TEX. ADMIN. CODE §§ 5.11-5.15 (1999).

Discussion:

The Comptroller's claims division processes direct deposit of compensation payments. For details, refer to the division's *Direct Deposit of Payroll Manual* (August 1992) and the Comptroller's administrative rules about electronic funds transfers.

Earned Income Credit Payment, Advanced

Applies to:

Each state agency or institution of higher education.

Source:

Publication 15, *Circular E, Employer's Tax Guide*, which is published by the Internal Revenue Service.

Discussion:

An employee is entitled to receive advanced earned income credit (EIC) payments with his or her compensation during the year if the employee is eligible for the EIC and has a "qualifying child."

To receive these payments, the employee must provide the employee's employer with a properly completed Form W-5, *Earned Income Credit Advance Payment Certificate*. An employer must make advance EIC payments to an employee who provides the form. The form is effective until the end of the calendar year unless the employee revokes it or files another one. An employee must file a new form each calendar year.

For calendar year 2000, the total amount of the advanced EIC payments may be as much as \$1,412. Each calendar year maximum is published in *Circular E, Employer's Tax Guide*.

Executive Head of a State Agency, Restrictions on Certain Actions Involving

Applies to:

Each state agency in the executive branch of state government or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 618.001-618.003 (Vernon Supp. 2000), as added by Act of May 26, 1999, 76th Leg., R.S., ch. 1174, § 1, 1999 Tex. Gen. Laws 4097, 4097-8.

Discussion:

The executive head of a state agency may not be reassigned to another position in the agency or at another agency that also is controlled by the same governing body unless the governing body, in an open meeting, votes to approve the proposed reassignment.

A state agency may not contract with the executive head of the agency, with a person who at any time during the four years before the date of the contract was the executive head of the agency, or with a person who employs a current or former executive head of a state agency unless the governing body:

- Votes, in an open meeting, to approve the contract; and
- Notifies the Legislative Budget Board, not later than the fifth day before the date of the vote, of the terms of the proposed contract.

For the purposes of the two preceding paragraphs:

- **Executive head of a state agency** means the director, executive director, commissioner, administrator, chief clerk, or other individual who is appointed by the governing body of the state agency or by another state or local officer to act as the chief executive or administrative officer of the agency and who is not an appointed officer. The term includes the chancellor or highest-ranking executive officer of a university system and the president of a public senior college or university as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **State agency** has the meaning assigned by TEX. GOV'T CODE ANN. § 572.002(10) (Vernon Supp. 2000).

Exempt Positions, Bona Fide New

Applies to:

Each person holding a position exempted from the position classification plan by the governor under TEX. GOV'T CODE ANN. § 654.012(8)(A) (Vernon Supp. 2000).

Sources:

TEX. GOV'T CODE ANN. § 654.0125(a)-(c) (Vernon Supp. 2000).

Discussion:

Appropriated money may be used to pay the salary of a person holding a position exempted from the position classification plan by the governor under TEX. GOV'T CODE ANN. § 654.012(8)(A) (Vernon Supp. 2000) only if the following requirement is satisfied. The position must be a bona fide new position established to accomplish duties related to programs or functions that were not anticipated, and for that reason not funded, under the General Appropriations Act.

The governor may not create a new position under Section 654.012(8)(A), Government Code, for the sole purpose of adjusting the salary of an existing position.

The governor's exemption of a position from the position classification plan under Section 654.012(8)(A), Government Code, must contain a certification that the exemption is for a bona fide new position. The Comptroller may not pay compensation for the position until formal notification of the action of the governor to exempt the position is filed with the classification officer and the Legislative Budget Board.

Exempt Positions Schedule

Applies to:

Each individual who holds a position listed in an agency's *Schedule of Exempt Positions* in the General Appropriations Act (GAA).

Sources:

Section 9-3.06(a)-(d), (f) of the GAA; Rider #3 in the appropriations to the office of the governor in the GAA.

Discussion:

With certain exceptions, an individual who holds a position listed in an agency's *Schedule of Exempt Positions* in the GAA shall receive compensation at a rate not to exceed the amount indicated in the schedule.

The following table lists the salary range for a position listed in an agency's *Schedule of Exempt Positions* if the term "Group" followed by an Arabic number is stated immediately after the name of the position. If an agency's *Schedule of Exempt Positions* has a maximum salary that is less than the maximum salary listed in the table below, the maximum in the agency's schedule prevails over the maximum in the following table.

Scheduled Exempt Position Salary Rates

Group	Minimum Salary	Maximum Salary
1	\$ 45,816	\$ 70,778
2	54,228	83,784
3	64,200	99,192
4	76,068	117,516
5	90,060	139,140
6	106,692	164,748

Notwithstanding any restriction in the GAA, the governor may designate the title and compensation rate of exempt positions to be used by the office of the governor, pursuant to the GAA and other state and federal legislation.

Notwithstanding the rate listed in an agency's *Schedule of Exempt Positions*, the governor may set the compensation rate of a position listed below in an amount not less than the "Minimum Salary" and not more than the "Maximum Salary" listed in the above table for the position's designated group.

307 Secretary of State: Secretary of State, Group 4

320 Texas Workforce Commission: Commissioners (3), Group 4

325 Fire Fighters' Pension Commissioner: Commissioner, Group 1

- 332 Texas Department of Housing and Community Affairs: Executive Director, Group 4
- 333 Office of State-Federal Relations: Executive Director, Group 3
- 359 Office of Public Insurance Counsel: Public Counsel, Group 3
- 360 State Office of Administrative Hearings: Chief Administrative Law Judge, Group 3
- 401 Adjutant General Department: Adjutant General, Group 3
- 410 Criminal Justice Policy Council: Executive Director, Group 3
- 454 Texas Department of Insurance: Commissioner of Insurance, Group 6
- 473 Public Utility Commission of Texas: Commissioners (3), Group 4
- 475 Office of Public Utility Counsel: Public Counsel, Group 3
- 480 Texas Department of Economic Development: Executive Director, Group 4
- 529 Health and Human Services Commission: Commissioner, Group 6
- 582 Texas Natural Resource Conservation Commission: Commissioners (3), Group 5
- 696 Texas Department of Criminal Justice, Chairman, Board of Pardons and Paroles, Group 3, Texas Department of Criminal Justice: Parole Board Members (17), Group 3
- 701 Texas Education Agency: Commissioner of Education, Group 6

An individual who holds a position listed in an agency's *Schedule of Exempt Positions* may not receive a salary in excess of the rate listed in the schedule. Any salary increase from appropriated funds must be:

- In writing; and
- Consistent with the schedule; and
- Signed by the presiding officer of the agency's governing board; and
- Submitted to the governor, the Legislative Budget Board, and the Comptroller; and
- Approved by the board in a public meeting.

Each title listed in an agency's *Schedule of Exempt Positions* authorizes only one position unless the title is followed by an Arabic number indicating the number of positions authorized or by "(UL)," which authorizes an unlimited number of positions for the position title. The number of authorized positions for a title listed in a *Schedule of Exempt Positions* may be exceeded if:

- The purpose is to hire a replacement in a key management position as certified by the agency head; and
- The current incumbent of the position has formally resigned or otherwise announced irrevocable plans to vacate the position; and
- The position number limitation is exceeded for a period not to exceed the equivalent of one month's salary per fiscal year per terminating incumbent (excluding time spent on the payroll for the purpose of exhausting accrued vacation time or state compensatory time); and
- The exception is reported in the manner as prescribed for payroll reporting procedures.

Exempt Position to Classified Position, Transfer From¹

Applies to:

- A. Each position classified under the state's position classification plan, but only to a state employee employed in the executive or judicial branch of state government. See the discussion later in the guide entitled *Legislative Branch, Employees in the*.
- B. Each person who moves within an agency from an exempt position to a classified position.

Sources:

- A. TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252-659.253, 815.208(e) (Vernon Supp. 2000).
- B. Section 9-3.06(e) of the General Appropriations Act.

Discussion:

- A. In the following, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

A state employee who moves within a state agency from a position exempt from the state's position classification plan to a classified position shall receive an annual salary in the proper salary group not to exceed:

- The rate for the salary step equal to the employee's current exempt salary or the rate for the next higher salary step, if moving to a position in a salary group that is divided into steps; or
- The employee's current exempt salary or the maximum rate of the new salary group, whichever is lower, if moving to a position in a salary group that is not divided into steps.

This paragraph applies when a state agency that pays a state employee an exempt salary specifically established in the GAA transfers the employee to a position in which the employee is paid under Salary Schedule A, B, or C of the GAA. The agency may not grant a merit salary increase to the employee until at least six months after the date the agency begins to pay the employee under that schedule.

¹Both general law and the General Appropriations Act cover this subject, in slightly different ways. Because the Comptroller does not have the legal authority to resolve any conflicts on this subject between general law and the GAA, both are discussed in this guide.

Except as specifically discussed above, a state agency that at any time during a state fiscal biennium pays a state employee an exempt salary specifically established in the GAA may not subsequently during that biennium pay the employee a greater salary under Salary Schedule A, B, or C of the GAA.

The Legislative Budget Board (LBB) and the governor together may approve an exception to the above limitations for a state employee:

- On receiving the employing state agency's application for the exception; and
- If the employee's job responsibilities with the agency have changed substantially during the state fiscal biennium.

The Employees Retirement System of Texas (ERS) is exempt from the preceding discussion to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

B. An employee who moves within an agency from an exempt position to a classified position shall receive an annual salary rate in the proper salary group not to exceed:

- The salary step equal to the current salary or the next higher salary step rate if moving to a classification in Salary Schedule A; or
- The current salary or the maximum of the new salary range, whichever is lower, if moving to a classification in Salary Schedule B or C.

An agency may not grant a merit salary increase to an employee until six months after the date the agency transfers the employee from an exempt salary position to a salary paid as provided by Salary Schedule A, B, or C.

Except as specifically discussed above, a state agency that pays an employee an exempt salary established under the GAA may not subsequently pay the employee a greater salary under Salary Schedule A, B, or C.

The LBB and the governor may act together to approve a specific exception to the salary limitations above:

- After receiving an application from a state agency; and
- If the employee's job responsibilities with the agency change substantially during the biennium.

Holidays for State Employees not Employed by Institutions of Higher Education

Applies to:

Each state agency that is not an institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 662.001-662.010, 662.012 (Vernon 1994 & Supp. 2000).

Discussion:

The following is derived from the policy document to amend the Comptroller's current administrative rule about payroll requirements, which may be found at 34 TEX. ADMIN. CODE § 5.41 (1999).² Because the amendments have not yet been adopted, the following is not yet in effect as a formal rule.

The Comptroller's legal authority to adopt rules concerning holidays for state employees not employed by institutions of higher education is TEX. GOV'T CODE ANN. § 662.012 (Vernon Supp. 2000). The purpose of the rules is to implement TEX. GOV'T CODE ANN. §§ 662.001-662.010 (Vernon 1994 & Supp. 2000).

Definitions

The following definitions apply for the purposes of holidays for state employees not employed by institutions of higher education:

- **Bid** means any process developed by the State Council on Competitive Government to provide a commercially available service in competition with private commercial sources or state agency providers.
- **Full-time state employee** means a state employee who is not a part-time state employee.
- **Institution of higher education** has the meaning assigned by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).
- **National holiday** means:
 - The first day of January, “New Year’s Day”; or
 - The third Monday in January, “Martin Luther King Jr., Day” in observance of the birthday of Dr. Martin Luther King, Jr.; or
 - The third Monday in February, “President’s Day”; or
 - The last Monday in May, “Memorial Day”; or

²The main text includes changes made to the law by the Texas legislature during its 76th regular session in 1999.

- The fourth day of July, “Independence Day”; or
 - The first Monday in September, “Labor Day”; or
 - The 11th day of November, “Veterans Day,” dedicated to the cause of world peace and to honoring the veterans of all wars in which Texans and Americans have fought; or
 - The fourth Thursday in November, “Thanksgiving Day”; or
 - The 25th day of December, “Christmas Day.”
- The term **national holiday** includes a day on which both a state and a national holiday falls.
 - **Optional holiday** includes only the days on which Rosh Hashanah, Yom Kippur, or Good Friday falls.

Note: “Cesar Chavez Day” on March 31st of each year is a unique type of holiday authorized by TEX. GOV’T CODE ANN. § 662.013 (Vernon Supp. 2000). In certain respects, Cesar Chavez Day differs from the optional holidays discussed in this guide. The Comptroller does not have the legal authority to adopt rules for Cesar Chavez Day; therefore, it will not be included in the rule.

However, for your convenience we have included a summary of the provisions of TEX. GOV’T CODE ANN. § 662.013 (Vernon Supp. 2000) on Cesar Chavez Day. The administrative head of a state agency may allow an employee of the agency to have a day off with pay on Cesar Chavez Day in lieu of any other state holiday that occurs on a weekday, other than a weekday on which an election is held throughout the state, on which the state agency is required to be open but on which the operations of the agency are required to be maintained at only a minimum level. Each state agency shall remain open and conduct the operations of the agency at a minimum level on Cesar Chavez Day. The total number of holidays in a year to which an employee of a state agency is entitled is not changed by the addition of Cesar Chavez Day as an optional holiday.

- **Part-time state employee** means a state employee who normally works fewer than 40 hours each week.
- **State agency** means a unit of state government, including a state board, commission, council, department, committee, agency, or office that was created by the constitution or a statute of this state and is in any branch of state government. The term does not include a local government, a river authority, a special district, any other political subdivision, or an institution of higher education.
- **State employee** means an employee of a state agency or an appointed officer of a state agency whose office is not created by the state constitution. The term includes a part-time, hourly, or temporary state employee or an individual who uses paid leave from a state agency. The term does not include an individual who uses unpaid leave for an entire workday from a state agency.

- **State holiday** means:
 - The 19th day of January, “Confederate Heroes Day,” in honor of Jefferson Davis, Robert E. Lee, and other Confederate heroes; or
 - The second day of March, “Texas Independence Day”; or
 - The 21st day of April, “San Jacinto Day”; or
 - The 19th day of June, “Emancipation Day in Texas,” in honor of the emancipation of the slaves in Texas in 1865; or
 - The 27th day of August, “Lyndon Baines Johnson Day,” in observance of the birthday of Lyndon Baines Johnson; or
 - The Friday after the fourth Thursday in November; or
 - The 24th day of December; or
 - The 26th day of December.
- The term **state holiday** does not include a day on which both a state and a national holiday falls.
- **Temporary state employee** means a state employee who is hired to provide services to a state agency for a limited time. The term includes a retiree of a state retirement system who is hired by a state agency to work as a state employee less than the maximum time the retiree may work each fiscal year to avoid suspension of the retiree’s retirement annuity and a seasonal employee. The term does not include an independent contractor or the employee or independent contractor of an independent contractor.
- **Workday** means a day on which a state employee is normally scheduled to work. The term does not include a national or state holiday.

Applicability of this Discussion to the Legislature

The discussion about holidays in this guide applies to a state employee employed by the House of Representatives or the Senate only at the discretion of the presiding officer or the administration committee of each respective house.

Entitlement to National and State Holidays

Except as stated in the following two paragraphs, an individual who is a state employee on the last workday before or the first workday after a national or state holiday, or on both workdays, is entitled to a paid day off from working for a state agency on the holiday if:

- The holiday does not fall on a Saturday or Sunday; and
- The General Appropriations Act (GAA) does not prohibit state agencies from observing the holiday.

An individual who is not a state employee on the last workday before a state or national holiday but who is a state employee on the first workday after the holiday may not be paid for the holiday if it occurs during the same month as the last workday before the holiday. Examples:

- An individual who is not a state employee on April 20th (the last workday before the April 21st holiday) but who is on April 22nd (the first workday after the April 21st holiday) may not be paid for the April 21st holiday.
- An individual who is not a state employee on December 31st (the last workday of December) but who is on January 2nd (the first workday of January) is entitled to be paid for the January 1st holiday.

An individual who is a state employee on the last workday before a state or national holiday but who is not a state employee on the first workday after the holiday may not be paid for the holiday if it occurs before the first workday of a month and during that month. Examples:

- An individual who is a state employee on December 31st (the last workday of December) but not on January 2nd (the first workday of January) may not be paid for the January 1st holiday.
- An individual who is a state employee on April 20th (the last workday before the April 21st holiday) but not on April 22nd (the first workday after the April 21st holiday) is entitled to be paid for the April 21st holiday.

Entitlement to Optional Holidays

An individual who is a state employee on the last workday before or the first workday after an optional holiday, or on both workdays, is entitled to a paid day off from working for a state agency on the holiday if:

- The holiday does not fall on a Saturday or Sunday; and
- The employee agrees to give up, during the same fiscal year, a state holiday:
 - On which the employee is entitled to a paid day off from work or for which the employee is entitled to be paid; and
 - That does not fall on a Saturday, a Sunday, the Friday after the fourth Thursday in November, or the 24th or 26th day of December; and
 - That the GAA does not prohibit state agencies from observing; and
- The GAA does not prohibit state employees from observing the optional holiday.

A state employee is entitled to a paid day off from working for a state agency on each day of an optional holiday that extends for more than one day if the employee agrees to give up during the same fiscal year an equivalent number of state holidays:

- On which the employee is entitled to a paid day off from work or for which the employee is entitled to be paid; and
- That do not fall on a Saturday, a Sunday, the Friday after the fourth Thursday in November, or the 24th or 26th day of December; and
- That the GAA does not prohibit state agencies from observing.

An individual who has taken a paid day off from work on an optional holiday but who subsequently becomes ineligible to be paid for or to a paid day off from work on the state holiday that the individual agreed to give up is indebted to the state for the compensation earned on the optional holiday.

Part-time State Employees

The pay of a part-time state employee for a paid holiday must be proportionally reduced to account for the fewer hours the employee normally works.

Employees Working Other than Monday Through Friday

This paragraph applies only to a full-time state employee who normally works on a schedule other than Monday through Friday and who works an entire fiscal year. The amount of paid holiday time off to which the employee is entitled during that year is equal to the product of:

- Eight hours; and
- The number of national and state holidays on which state employees are entitled to a paid day off from work during that year.

This paragraph applies only to a full-time state employee who normally works on a schedule other than Monday through Friday and who works less than an entire fiscal year. The amount of paid holiday off to which the employee is entitled during that year is equal to the product of:

- Eight hours; and
- The number of state and national holidays that occur during the part of the year worked by the employee and on which state employees are entitled to a paid day off from work.

This paragraph applies only to a part-time state employee who normally works on a schedule other than Monday through Friday. The amount of paid holiday time off to which the employee is entitled during a fiscal year must be determined in the same manner as for a full-time state employee, with one exception. The number of hours for each holiday must be proportionally reduced to account for the fewer hours the employee normally works.

Remaining Open to Conduct Business on State Holidays

A state agency or an institution of higher education shall have enough employees on duty during a state holiday to conduct the public business of the agency or institution. This requirement does not apply to a state holiday that falls on a Saturday, a Sunday, the Friday after the fourth Thursday in November, or the 24th or 26th day of December.

Accrual and Usage of Holiday Compensatory Time

A state employee who is required to work on a national or state holiday is entitled to compensatory time off during the twelve months after the holiday if the employee is entitled to a paid day off from working for a state agency on the holiday. The employee must give reasonable notice of the employee's intention to use the compensatory time, but is not required to say how the compensatory time will be used.

An institution of higher education may allow an employee who is required to work on a national or state holiday that does not fall on a Saturday or Sunday to take compensatory time off in accordance with the preceding paragraph or may instead pay the employee at the employee's regular rate of pay for that time if the institution determines that allowing compensatory time off would disrupt normal teaching, research, or other critical functions.

Transfers of Holiday Compensatory Time

Except as provided in the next paragraph, a state agency shall accept the balance of holiday compensatory time accrued by a state employee who transfers to that agency from another state agency if the employee transfers as a direct result of:

- The legislature's transfer of legal authority or duties from the agency that formerly employed the employee to the agency that currently employs the employee; or

- A requirement of the State Council on Competitive Government for the agency that formerly employed the employee to bid a commercially available service that the agency previously performed.

A state agency is not required to accept a state employee's holiday compensatory time if the employee is required to apply for the new position. The agency has the option to accept or not accept the time so long as the agency treats all similarly situated employees the same.

Which Agency Pays for Holidays Occurring Between State Employments

This paragraph applies to a state employee who terminates employment with one state agency and begins employment with another state agency or with an institution of higher education if no workdays occur between the two employments. If the employee is entitled to a paid day off from work on a state or national holiday that falls on a day between the two employments, then the agency or institution to which the employee transfers is responsible for paying the employee for the holiday. This responsibility exists regardless of whether the agency or institution that receives the employee recognizes the holiday.

This paragraph applies to a state employee who terminates employment with one state agency and begins employment with another state agency if at least one workday occurs between the two employments. If at least one workday falls between the employee's last day of employment at the first state agency and a state or national holiday, then the agency to which the employee transfers is responsible for paying the employee for the holiday. If no workdays fall between the employee's last day of employment at the first state agency and a state or national holiday, then the agency from which the employee transfers is responsible for paying the employee for the holiday. This paragraph does not apply if the employee is not entitled to a paid day off from work on the holiday.

Legislative Branch, Employees in the

Applies to:

Each employee in the legislative branch of state government.

Source:

TEX. GOV'T CODE ANN. § 659.251(b) (Vernon Supp. 2000).

Discussion:

The policies for promotions, demotions, and other adjustments to salary for employees of the legislative branch of state government, including employees of the lieutenant governor, are determined as follows. For employees of either house of the legislature, employees of a legislator, or employees of the lieutenant governor, the presiding officer of the appropriate house of the legislature determines the policies. For employees of a legislative agency, the administrative head of the agency determines the policies.

Merit Salary Increases and One-Time Merit Payments

Applies to:

- A. Each state agency.
- B. Each position classified under the state's position classification plan, but only to a state employee in the executive or judicial branch of state government. See the discussion earlier in the guide entitled *Legislative Branch, Employees in the*.

Sources:

- A. Section 9-3.02 of the General Appropriations Act (GAA).
- B. TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252, 659.255(a)-(b), (e), 815.208(e) (Vernon Supp. 2000).

Discussion:

- A. The GAA says that a state agency may award a merit salary increase to an employee in a classified position only as authorized by TEX. GOV'T CODE ANN. § 659.255 (Vernon Supp. 2000) and only if the agency has not promoted, demoted, or awarded a merit salary increase to the employee during the preceding six months.
- B. In the following, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.
 - A state agency administrator may grant a merit salary increase, including a one-time merit payment, to an employee compensated under Salary Schedule A or B of the GAA whose job performance and productivity are consistently above that normally expected or required. An employee compensated under Salary Schedule C of the GAA is not eligible for a merit salary increase or a one-time merit payment.
 - For an employee classified under Salary Schedule A of the GAA, a merit increase involves an increase in the employee's salary to a higher step rate in the same salary group. For an employee classified under Salary Schedule B of the GAA, a merit increase involves an increase in the employee's salary to a higher rate within the range of the same salary group.

An employee is eligible for a merit salary increase or a one-time merit payment if:

- The employee has been employed by the state agency for at least six continuous months before the award of the increase or payment; and
- At least six months have elapsed since the employee's last promotion, enhanced compensation award authorized by the GAA, one-time merit payment, or merit salary increase at the agency; and
- The agency's criteria for granting merit salary increases or one-time merit payments include specific criteria and documentation to substantiate the granting of a merit increase or a one-time merit payment.

A one-time merit payment to a state employee is a single payment and is not considered a part of the employee's "base salary," as that term is commonly used.

In addition, a one-time merit payment may be awarded to an employee even if the employee already is classified on step 9 under Salary Schedule A of the GAA or at the maximum rate under Salary Schedule B of the GAA.

The Employees Retirement System of Texas (ERS) has informed the Comptroller that a one-time merit payment does not constitute "compensation," as that term is defined by TEX. GOV'T CODE ANN. § 811.001(7) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the payment under TEX. GOV'T CODE ANN. § 815.402(a) (Vernon Supp. 2000). ERS has informed the Comptroller that one-time merit payments may not be considered when determining the amount of the state's contribution to ERS under TEX. GOV'T CODE ANN. § 815.403(a)(1) (Vernon Supp. 2000).

The Teacher Retirement System of Texas (TRS) has informed the Comptroller that a one-time merit payment does not constitute "salary and wages," as that term is defined by TEX. GOV'T CODE ANN. § 822.201(b) (Vernon Supp. 2000). Therefore, member retirement contributions may not be deducted from the payment under TEX. GOV'T CODE ANN. §§ 825.403(a), 830.201(a) (Vernon Supp. 2000). TRS has informed the Comptroller that one-time merit payments may not be considered when determining the amount of the state's contribution to TRS or the optional retirement program under TEX. GOV'T CODE ANN. §§ 825.404(a), 830.201(a) (Vernon Supp. 2000).

ERS is exempt from the preceding discussion in "B." to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Monthly Payrolls

Applies to:

Each state agency or institution of higher education.

Source:

TEX. GOV'T CODE ANN. § 659.081 (Vernon Supp. 2000).

Discussion:

Annual salaries for state officers and employees shall be paid once each month except as provided by Subchapter F, Chapter 659, Government Code, or the General Appropriations Act.

See the discussion later in this guide about semi-monthly payrolls.

Nepotism Prohibition

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 573.083, 573.084(a) (Vernon 1994).

Discussion:

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible. A public official who violates this prohibition commits an offense involving official misconduct. The offense is a misdemeanor punishable by a fine not less than \$100 or more than \$1,000.

For the purpose of the preceding paragraph, **public official** means:

- An officer of this state; or
- An officer or member of a board of this state; or
- A judge of a court created by or under a statute of this state.

Officer Declining Remuneration

Applies to:

Each state agency or institution of higher education.

Source:

TEX. GOV'T CODE ANN. § 659.003(a)-(d) (Vernon Supp. 2000).

Discussion:

An officer may decline remuneration associated with the office. To decline remuneration, the officer must execute a declination form prescribed by the secretary of state. The form shall be designed to permit the person to decline all remuneration or to decline particular remuneration from among various types associated with the office. The form must be filed with the secretary of state. The form is effective on the date it is filed. A declination filed after an officer has qualified for office may be revoked at any time. A declination filed before a person has qualified for office may not be revoked during the term of office to which the person is appointed or elected.

For the purpose of the preceding paragraph:

- **Officer** means an elected officer or appointed officer, as those terms are defined by Chapter 572, Government Code. The term includes a person who has received a certificate of election to such an office or who has been appointed or nominated to such an office but has not been confirmed.
- **Remuneration** includes salary, compensatory per diem, expense per diem, reimbursement for expenses, longevity pay, and fees.

Partial Payment, Determining Amount of Monthly or Hourly Pay for

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. §§ 659.019(c), 659.085 (Vernon Supp. 2000).

Discussion:

Except as discussed below, the Comptroller has specific statutory authority to determine the method for calculating an employee's monthly or hourly salary rate or the amount of compensation paid to the employee for working part of a month.

Equivalent Monthly Salary Rate

The equivalent monthly salary rate for an annual employee who maintains a 40-hour workweek and is covered under Chapter 658, Government Code, is equal to the employee's annual salary rate divided by twelve.

Equivalent Hourly Rate of Pay for Employees Not Employed by Institutions of Higher Education

An employee's equivalent hourly rate of pay for a particular month is equal to the employee's annual salary rate divided by twelve divided by the number of working hours in that month.

A work day means any day except Saturday or Sunday.

The preceding paragraph applies only to:

- An annual employee who maintains a 40-hour workweek and is covered under Chapter 658, Government Code; or
- A part-time salaried employee.

The preceding paragraph applies to an employee employed by an institution of higher education, as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), only if the institution chooses for the method described in that paragraph to apply.

Equivalent Hourly Rate of Pay for Employees Employed by Institutions of Higher Education

An institution of higher education, as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), may compute an employee's equivalent hourly rate of pay for a given month in accordance with the above method for employees not employed by institutions of higher education.

Alternatively, the institution may compute the rate by dividing the employee's annual salary by 2080, which is the number of working hours in a standard work year.

The two preceding paragraphs apply only to:

- An annual employee who maintains a 40-hour workweek and is covered under Chapter 658, Government Code; or
- A part-time salaried employee.

Employees Who are Paid Once Each Month and Who Work Only Part of a Month

The following two paragraphs apply only to an employee who is paid once each month.

The amount of compensation paid to an employee for working part of a month is equal to the product of:

- The employee's equivalent hourly rate of pay for that month; and
- The number of hours worked by the employee during that month.

The same method is used when determining the amount of compensation paid to an employee who is on leave without pay for less than an entire calendar month.

Employees Who are Paid Twice Each Month and Who Work Only Part of a Month

The following two paragraphs apply only to an employee who is paid twice each month.

This paragraph applies to a state employee who does not work all the available hours in the first half of a month but works all the available hours in the second half of the month. The amount of compensation that must be paid to the employee for the entire month is equal to the product of:

- The employee's equivalent hourly rate of pay for that month; and

- The number of hours worked by the employee during that month. The amount of compensation that must be paid to the employee for the first half of the month is equal to the product of:
 - The employee’s equivalent hourly rate of pay for that month; and
 - The number of hours worked by the employee in that half of the month. The amount of compensation that must be paid to the employee for the second half of the month is equal to the difference between:
 - The amount of compensation that must be paid to the employee for the entire month; and
 - The amount of compensation that must be paid to the employee for the first half of the month.

This paragraph applies to a state employee who works all the available hours in the first half of a month but does not work all the available hours in the second half of the month. The amount of compensation that must be paid to the employee for the entire month is equal to the product of:

- The employee’s equivalent hourly rate of pay for that month; and
- The number of hours worked by the employee during that month. The amount of compensation that must be paid to the employee for the first half of the month is equal to 50 percent of the employee’s monthly salary rate. The amount of compensation that must be paid to the employee for the second half of the month is equal to the difference between:
 - The amount of compensation that must be paid to the employee for the entire month; and
 - The amount of compensation that must be paid to the employee for the first half of the month.

The methods described in the two preceding paragraphs also apply to an employee who is on leave without pay for less than half of an entire calendar month.

Contracts with Employees

An agency that may contract with its employees for employment for less than a 12-month period may make equal monthly salary payments under the contract during the contract period or during the fiscal year.

Part-Time Employees

Applies to:

- A. Each state agency or institution of higher education in the executive or judicial branch of state government.
- B. Each part-time employee.

Sources:

- A. TEX. GOV'T CODE ANN. §§ 658.001(2), 658.009(a) (Vernon Supp. 2000).
- B. TEX. GOV'T CODE ANN. § 659.019(a)-(b) (Vernon Supp. 2000).

Discussion:

- A. A state agency may fill a regular full-time position with one or more part-time employees without regard to whether the position is subject to or exempt from the state's position classification plan.

For the purpose of the preceding paragraph, **state agency** means:

- A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000); or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the judicial branch.

- B. In computing the salary of a part-time employee, the rate of pay must be proportional to the rate authorized by the General Appropriations Act for full-time employment in the same classified position, or if the position is not under the state's position classification plan, for full-time employment in the applicable exempt position.

A part-time employee is subject to the statutes in Subchapter K, Chapter 659, Government Code, concerning promotions, reclassifications, and other adjustments to salary.

A part-time employee is subject to the leave without pay provisions of TEX. GOV'T CODE ANN. § 659.085(c) (Vernon Supp. 2000).

Position Classification Act, Compliance with the

Applies to:

Each employment to which the Position Classification Act (PCA) applies.

Source:

TEX. GOV'T CODE ANN. § 654.014(a) (Vernon Supp. 2000).

Discussion:

Each employment to which the PCA applies shall conform to:

- The classes of work described in the position classification plan; and
- The titles authorized by the plan; and
- The salary rates and provisions in the General Appropriations Act.

Promotions

Applies to:

Each position classified under the state's position classification plan, but only to a state employee employed in the executive or judicial branch of state government. See the discussion earlier in the guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252, 659.256, 815.208(e) (Vernon Supp. 2000).

Discussion:

In the following, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

A promotion is an employee's change in duty assignment within a state agency from one classified position to another classified position that:

- Is in a salary group with a higher minimum salary rate; and
- Requires higher qualifications, such as greater skill or longer experience; and
- Involves a higher level of responsibility.

When an employee is promoted to a position in a higher salary group in Salary Schedule A of the General Appropriations Act (GAA), the employee shall receive a salary rate at least one step higher than the employee's salary rate before promotion or the minimum rate of the new salary range, whichever is higher. At the discretion of the state agency administrator, the employee may receive an annual salary rate up to and including the maximum rate of the new salary range.

When an employee is promoted from a position in Salary Schedule B or C of the GAA to a position in Salary Schedule A of the GAA, the employee shall receive a step rate that is at least one step above the rate the employee received before promotion or the minimum rate of the new salary range, whichever is higher. At the discretion of the state agency administrator, the employee may receive an annual rate up to and including the maximum rate of the new salary range.

When an employee is promoted in Salary Schedule B of the GAA or from Salary Schedule A or C of the GAA to Salary Schedule B of the GAA, the employee shall receive a salary rate that is at least 3.4 percent higher than the employee's salary before promotion or the minimum rate of the new salary range, whichever is higher. At the discretion of the state agency administrator, the employee may receive an annual rate up to and including the maximum rate of the new salary range.

When an employee is promoted in Salary Schedule C of the GAA or from Salary Schedule A or B of the GAA to Salary Schedule C of the GAA, the employee shall receive the rate set in the schedule for that salary group.

Notwithstanding any of the preceding, an employee whose salary before promotion exceeds the maximum rate of the employee's assigned salary group (a "red-circled employee") may not receive more than the maximum rate of the new salary group, even if the increase is less than one step in Salary Schedule A of the GAA or 3.4 percent in Salary Schedule B of the GAA. Therefore, a "red-circled employee" who receives a decrease in salary as the result of a promotion to a higher salary group would still have been "promoted."

The promotion of a "red-circled employee" removes the employee's red-circled status. There is no legal authority to create new red-circled employees.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of promotions to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Reallocation or Reclassification to Different Salary Group

Applies to:

Each position classified under the state's position classification plan, but only to a state employee employed in the executive or judicial branch of state government. See the discussion earlier in the guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.254, 815.208(e)
(Vernon Supp. 2000).

Discussion:

An employee whose classified position is reallocated by the General Appropriations Act (GAA) or reclassified under the Position Classification Act (PCA) to a higher salary group must be paid at the minimum salary rate in the higher salary group or at the salary rate the employee would have received without the reallocation or reclassification, whichever is higher, except:

- To maintain desirable salary relationships among employees in the affected positions, the salary may be adjusted not more than:
 - Two steps higher, if the employee's salary group is divided into steps by the GAA; or
 - 6.8 percent higher, if the employee's salary group is not divided into steps by the GAA; and
- The employee may not advance to a step number in the new salary group higher than the step number rate held before the reallocation or reclassification, if the employee's salary group is divided into steps by the GAA.

An employee whose classified position is reallocated by the GAA or reclassified under the PCA to a lower salary group must be paid at the salary rate that the employee would have received had the position not been reallocated or reclassified, not to exceed the maximum rate of the lower salary group.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of reallocations and reclassifications to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

In the preceding:

- **Higher salary group** means a salary group with a higher minimum salary rate.
- **Lower salary group** means a salary group with a lower minimum salary rate.

Retired Employees Who Resume Employment

Applies to:

Each state agency, including a public senior college or university.

Source:

TEX. GOV'T CODE ANN. § 659.0115 (Vernon Supp. 2000).

Discussion:

A state agency that reemploys an agency employee who retired on or after September 1, 1998, to perform services substantially similar to the services the retiree performed for the agency during the last twelve months of service before retirement may not pay the retiree a salary at an annualized rate that exceeds the lesser of:

- The rate of compensation the retiree received from the state during the last 12 months of service before retirement; or
- \$60,000

This salary limitation, however, does not apply to a retiree's first six months of reemployment after retirement, except that if a retiree is reemployed for more than six months after retirement, the limitation applies to the entire period of reemployment.

In the preceding:

- **Retired agency employee** means a person:
 - Whose last state service before retirement was for the state agency by which the retiree is reemployed; and
 - Who is a retiree of:
 - The employee class of membership of the Employees Retirement System of Texas; or
 - The Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency.
- **State agency** includes a “public senior college or university,” as that term is defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000).

Retroactive Pay

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. CONST. ART. III, §§ 44, 51, 53.

Discussion:

The Texas Constitution prohibits the state from paying extra salary to a state officer or employee for services already rendered to the state.

If a state officer or employee had a contractual or other enforceable legal right to a salary increase but was not paid the increase for any reason, the state must pay the difference between the amount the officer or employee was entitled to receive and the amount actually received. This type of “retroactive pay” would not violate the Texas Constitution because the officer or employee is not receiving any “extra” salary. The officer or employee would be receiving only the increase that the officer or employee was entitled to receive from the beginning.

An administrative error in awarding a salary increase is insufficient, by itself, to overcome the constitutional prohibition against retroactive salary increases. The error could be corrected by making a retroactive payment only if the error resulted in a state officer or employee not receiving the increase the officer or employee was entitled to receive under the law.

The claims division reviews all requests for retroactive pay on a case-by-case basis. An agency must provide sufficient supporting documentation with a payroll voucher to demonstrate that the payment is not prohibited by the Texas Constitution. The content and type of documentation that must be submitted will vary, depending upon the factual circumstances of the case. Requests for information on retroactive pay should be directed to the expenditure research and assistance section of the claims division at 512/475-1097.

Salary Cap

Applies to:

Each state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

Sources:

TEX. GOV'T CODE ANN. §§ 659.252, 659.261(a)-(c), (e), 815.208(e), (Vernon Supp. 2000); Section 9-3.05 of the General Appropriations Act (GAA).

Discussion:

For the purposes of the salary cap, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

Unless the Legislative Budget Board (LBB) and the budget division of the governor's office provide written approval, the maximum amount a state agency spends for merit salary increases in and promotions to classified positions during a fiscal year may not exceed the product of the total amount spent by the agency in the preceding fiscal year for classified salaries and the salary cap percentage set in the GAA for purposes of this computation (1.7 percent for the 2000-01 fiscal biennium).

The maximum amount shall be computed separately for each year of the state fiscal biennium. Merit salary increases and promotions awarded in the first year of a biennium do not count against the maximum amount that may be spent for those increases in the second fiscal year of that biennium.

Money spent to pay a salary increase for an employee who is promoted to a classified position title counts against the maximum only if, as a result of the promotion, the number of agency employees in that position title exceeds the maximum number of agency employees who have been in that position title at any time during the preceding six-month period.

The Comptroller is required to prescribe accounting and reporting procedures as necessary to ensure that the amount spent for merit salary increases and promotions does not exceed the preceding limitations. These procedures are included below.

The Employees Retirement System of Texas (ERS) is exempt from Sections 659.252 and 659.261(a)-(c), (e), Government Code, to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Using the Salary Cap Balances/Adjustments Report (F48BSCP1-2)

This report includes all activity that was processed during the time period indicated in the report heading. The same activity is updated to the online salary cap screens simultaneously with the production of the report. A Salary Cap Balances/Adjustments Report is run during the second weekend of the month and prints at each agency (Exhibit 2.1). Below are definitions of the report fields; numbers refer to fields on Exhibit 2.1.

- 1 DATE** represents the date that the report is run.
- 2 ORIGINAL SALARY CAP** is the initial amount calculated by the Comptroller for the new fiscal year. The total wages and salaries for the prior fiscal year are derived from the Uniform Statewide Accounting System (USAS) files of designated expenditure object codes. The total wages and salaries are then multiplied by the salary cap percentage to determine the Original Salary Cap amounts.
- 3 ADJUSTED SALARY CAP** is the sum of the Original Salary Cap amount plus Salary Cap Adjustments.
- 4 PREVIOUS REMAINING BALANCE** is the amount of salary cap expenditures remaining for the fiscal year. The amount is carried forward from the Remaining Balance of the prior month's report; this amount will be the Original Salary Cap for the September report.
- 5 PROMOTIONS** (Reason Code 020) are determined from personnel and position records. If the number of utilized positions within a job class exceeds the peak number in use for the prior six months, the expenditure projected for the remainder of the fiscal year for the resulting additional position(s) is counted against the salary cap balance. The report lists projected expenditures for individual employees as well as the total for the agency. The automated system restores projected expenditures to the balance for any employee with a promotion during the fiscal year who subsequently terminates employment or loses pay due to leave without pay (LWOP).
- 6 MERITS** (Reason Code 025) are determined from personnel records. Merit increases are projected for the remainder of the fiscal year and counted against the salary cap balance. The report lists projected expenditures for individual employees as well as the total for the agency. The automated system restores projected expenditures to the remaining balance for employees with a merit increase during the fiscal year who subsequently terminate employment or lose pay due to LWOP.

- 7 ONE-TIME MERITS** (Reason Code 035) are determined from personnel records. The one-time merit is a single payment, not an increase to be projected until the end of the fiscal year. There is no opportunity for any recovery of the one-time merit payment if the employee terminates employment or goes on leave without pay or terminates employment with the agency.
- 8 SALARY CAP ADJUSTMENTS** are submitted by agencies and must be approved. Agencies submit requests to correct the Original Salary Cap amount to the Comptroller. Requests to exceed the salary cap percentage must be approved by the LBB and the budget division of the Governor's Office and then submitted to the Comptroller.
- 9 BALANCE ADJUSTMENTS** resulting from monthly activities are submitted by agencies to correct the Remaining Balance. Examples include Letter of Authorization corrections to USPS or HRIS personnel records.
- 10 TOTAL IMPACT TO SALARY CAP** is the sum of Promotions, Merits, One-Time Merit Payments, Salary Cap Adjustments, and Balance Adjustments processed in the month as indicated by the dates in the report heading.
- 11 REMAINING BALANCE** is the sum of Previous Remaining Balance and Total Impact to Salary Cap. It represents the amount of the salary cap still available for promotions, merits, and one-time merit payments during the remainder of the fiscal year.

Exhibit 2.1 – Salary Cap Balances/Adjustments Report

For a copy of this exhibit, contact Bobbie Mendez at:
<cpa.fiscal.management@cpa.state.tx.us>.

Exhibit 2.2 – Using the Salary Cap Balances Screen HNLU1 (USPS) or F48CISSC (HRIS)

Agencies will have display access to the Salary Cap Balances screen. Agencies may use fiscal year and effective month to display information. The screen contains the same information as the Salary Cap Balances/Adjustments Report and is populated when the report is run. The information will be available for both years of the biennium. Below are definitions of the fields and instructions for using the screen.

```

> USPS      00XXX,2000,12                                ON HNLU1
                                     --- SALARY CAP BALANCES ---
__ AGENCY: 00XXX      FISCAL YEAR: 2000      EFFECTIVE MONTH: 12

ADJUSTED SALARY CAP:          1,893,544.71
ORIGINAL SALARY CAP:          1,893,544.71

PREVIOUS MONTH BAL:          1,463,037.80
PROMOTION TOTAL:              -44,126.59
MERIT TOTAL:                  -151,443.80
ONE-TIME MERIT TOTAL:         .00
BAL ADJUSTMENTS TOTAL:       .00
SAL CAP ADJUSTMENTS TOTAL:    .00

REMAINING BALANCE:           1,267,467.41

                                     06/06/00  08:48:31  M3LL PARJ ____

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TPES460 F48CISSC      HRIS                                06/06/2000 08:36:54
CMD: _____      SALARY CAP BALANCES SCREEN          PAGE:      1

                                     AGENCY: XXX      FISCAL YEAR: 2000      EFFECTIVE MONTH: 03

ADJUSTED SALARY CAP:          2,829,180.68
ORIGINAL SALARY CAP:          2,887,308.79

PREVIOUS MONTH BAL:          1,985,006.99
PROMOTION TOTAL:              -209,526.00
MERIT TOTAL:                  -51,006.55
ONE-TIME MERIT TOTAL:         .00
BAL ADJUSTMENTS TOTAL:       .00
SAL CAP ADJUSTMENTS TOTAL:    -58,128.11

REMAINING BALANCE:           1,666,346.33

-ENTER- -F1- -F2- -F3- -F4- -F5- -F6- -F7- -F8- -F9- -F10- -F11- -F12-
          PVSC MAIN MENU                                END
9117 END OF DATA

```

AGENCY

Enter your agency number.

FISCAL YEAR

Enter the fiscal year number for the information desired.

EFFECTIVE MONTH

Enter the number of the calendar month indicated by the From/Thru Date of the desired Salary Cap Balances/Adjustments Report. For example, if you enter **09** on November 5th, the screen will include all promotions, merits, and one-time merit payments that are processed September 1 through September 30 and adjustments updated before the Salary Cap Balances/Adjustments report is run on October 17.

ADJUSTED SALARY CAP

Displays the sum of the Original Balance and any approved Salary Cap Adjustments.

ORIGINAL SALARY CAP

Displays the initial amount calculated by the Comptroller and distributed to agencies through a *Notice to State Agencies*

PREVIOUS MONTH BALANCE

Displays the Remaining Balance carried forward from the previous month's report.

PROMOTION TOTAL

Displays the projected annual amount of promotions updated for the Effective Month.

MERIT TOTAL

Displays the projected annual amount of merit increases updated for the Effective Month.

ONE-TIME MERIT TOTAL

Displays the annual amount of one-time merit payment updates for the effective month.

BAL ADJUSTMENTS TOTAL

Displays the total amount of adjustments to monthly activities updated for the Effective Month.

SAL CAP ADJUSTMENTS TOTAL

Displays the total amount of adjustments to the Original Salary Cap updated for the Effective Month.

REMAINING BALANCE

Displays the total amount of salary cap funds available for future promotions, merits and one-time merit payments.

Exhibit 2.3 – Using the Salary Cap Adjustment Screen HNLU2 (USPS) or F48CRTSC (HRIS)

To report corrections to the salary cap amount, agencies must submit a Letter of Authorization (LOA) to claims division's expenditure research and assistance (ERA) section for approval (see Exhibit 2.5). If approved, the adjustment amount is entered on the screen.

Requests to exceed the salary cap must be sent to the budget division of the governor's office and the LBB. After approval, the agency submits the adjustment to the ERA section. The Comptroller updates the Adjusted Salary Cap with the specific amount authorized.

Agencies have display access to the Salary Cap Adjustment screen. Agencies may use fiscal year and effective month to display information. The screen lists all approved Salary Cap Adjustments for the effective month. Below are definitions of the screen fields and instructions for using the screen.

```

> USPS      00XXX,2000,10,001                                ON HNLU2

          --- SALARY CAP ADJUSTMENTS ---

AGENCY: 00XXX      FISCAL YEAR: 2000      EFFECTIVE MONTH: 10

*****
ADJUSTED SAL CAP:  6,915,710.59      AS OF: 11/10/1999
*****

          ___      55,570.02 *  11/05/1999

                                06/06/00  08:51:35  M3LL PARJ  ___

```

```

TPES460 F48CRTSC                HRIS                06/06/2000 08:43:38
  CMD: _____          SALARY CAP ADJUSTMENT SCREEN          PAGE: 1

                AGENCY: XXX          FISCAL YEAR: 2000          EFFECTIVE MONTH: 03

*****
ADJUSTED SALARY CAP:          __2829180.68 AS OF: 04/15/2000
*****

ADJUSTMENTS TO SALARY CAP: -  __58128.11          Y          04/10/2000
                _____
                _____
                _____
                _____
                _____
                _____
                _____

-ENTER- -F1- -F2- -F3- -F4- -F5- -F6- -F7- -F8- -F9- -F10- -F11- -F12-
                PVSC MAIN MENU REFR                PGBK PGFW                END
9117 END OF DATA

```

AGENCY
Enter your agency number.

FISCAL YEAR
Enter the fiscal year number for the information desired.

EFFECTIVE MONTH
Enter the number of the calendar month corresponding to the Salary Cap Balances/Adjustments Report. For example, if you enter **09** on November 5th, the screen will include all salary cap adjustments that are updated before the Salary Cap Balances/Adjustments Report is run on October 17.

ADJUSTED SALARY CAP
Displays the adjusted salary cap balance as of the month and year shown.

ADJUSTMENTS TO SALARY CAP
Displays each approved and updated adjustment for the effective month.

Exhibit 2.4 – Using The Balance Adjustment Screen HNLU3 (USPS) or F48CRTBA (HRIS)

Agencies submit requests for balance adjustments to the claims division’s ERA section, on the LOA form (See Exhibit 2.5.) Examples of balance adjustments include Letter of Authorization corrections to USPS or HRIS personnel records. ERA approves valid requests and forwards them to ASIST/HRIS for processing.

Agencies have display access to the Balance Adjustment screen. Agencies may use fiscal year and effective month to display information. The screen lists all approved Balance Adjustments for the effective month. Below are definitions of the screen fields and instructions for using the screen.

```
> USPS 00XXX,2000,08,006                                ON HNLU3

      --- BALANCE ADJUSTMENTS ---

AGENCY: 00XXX      FISCAL YEAR: 2000      EFFECTIVE MONTH: 08

*****
REMAINING BALANCE: 2,510,478.00      AS OF: 10/02/2000
*****

      ---      2,710.91 * 09/10/2000
      ---      290.64 * 09/10/2000
      ---      717.91 * 09/10/2000
      ---      230.00 * 09/10/2000
      ---      243.48 * 09/10/2000
      ---      313.00 * 09/10/2000

                                06/06/00 08:53:00 M3LL PARJ _____
```

```

TPES460 F48CRTEA          HRIS          06/06/2000 08:45:17
  CMD: _____ BALANCE ADJUSTMENT SCREEN          PAGE: 1

          AGENCY: XXX      FISCAL YEAR: 2000      EFFECTIVE MONTH: 03

*****
REMAINING BALANCE:      ___1,666,346.33 AS OF: 04/15/2000
*****

ADJUSTMENTS TO BALANCE:  _____
                        _____
                        _____
                        _____
                        _____
                        _____
                        _____
                        _____

-ENTER- -F1- -F2- -F3- -F4- -F5- -F6- -F7- -F8- -F9- -F10- -F11- -F12-
          PVSC MAIN MENU REFR          PGBK PGFW          END
9117 END OF DATA
    
```

AGENCY
Enter your agency number.

FISCAL YEAR
Enter the fiscal year number for the information desired.

EFFECTIVE MONTH
Enter the number of the calendar month corresponding to the Salary Cap Balances/Adjustments Report. For example, if you enter **09** on November 5th, the screen will include all balance adjustments that are updated before the Salary Cap Balances/Adjustments Report is run on October 17.

REMAINING BALANCE
Displays the total amount of salary cap funds available for future merits, one-time merit payments and promotions as of the specified date.

ADJUSTMENTS TO BALANCE
Displays each approved and updated adjustment for the effective month.

Exhibit 2.5 – Using the Letter of Authorization (LOA)

Exhibit 2.5 is a copy of the LOA form for Salary Cap and Balance Adjustments. Agencies use this form to request adjustments to the Original Salary Cap and Remaining Balance amounts. These amounts are listed on the monthly Salary Cap Balances/Adjustments Report. The ASIST section maintains a list of authorized LOA signatures for USPS agencies. The HRIS Representative is the authorized signature for non-USPS agencies.

Please complete the LOA request forms, attach supporting documentation, and submit to the following address or fax directly to the claims division's ERA section at 512/475-0588.

Comptroller of Public Accounts
Expenditure Research and Assistance
LBJ State Office Building, 9th Floor
111 East 17th Street
Austin, Texas 78774

Supporting documentation is anything that is relevant to the requested adjustment and offers proof for the transaction. Examples include screen prints or personnel actions.

The expenditure research and assistance section of the claims division forwards approved requests to the ASIST or HRIS sections, as applicable. ASIST and HRIS enter adjustments to the salary cap system. Unapproved requests will be returned to the agency with an explanation.

USPS agencies may view the LOA updates online with the Salary Cap Adjustment screen (HNLU2) and the Balance Adjustment screen (HNLU3).

Non-USPS agencies may view the updates with the Salary Cap Adjustment Screen (F48CRTSC) and the Balance Adjustment Screen (F48CRTBA).

Exhibit 2.5 – Letter of Authorization Form

For a copy of this exhibit, contact Bobbie Mendez at:
<cpa.fiscal.management@cpa.state.tx.us>.

Salary Limited to Maximum Group Rate

Applies to:

Each position classified under the state's position classification plan, but only to a state employee employed in the executive or judicial branch of state government. See the discussion earlier in the guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.259, 815.208(e)
(Vernon Supp. 2000).

Discussion:

A salary adjustment authorized by Subchapter K of Chapter 659, Government Code, may not result in an employee receiving an annual salary that exceeds the maximum rate of the salary group to which the employee's position is allocated.

An employee who is paid above the maximum of the employee's job class' designated salary group on August 1, 1999, will be allowed to maintain that salary. (This employee is commonly known as a "red-circled employee.") This employee may not receive an additional salary increase until the salary maximum for the employee's designated salary group encompasses the employee's salary. This prohibition includes across-the-board increases, merit increases, and one-time merit payments. The employee must be paid within the salary range if the employee is promoted, demoted, or reclassified.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of salaries being limited to the maximum group rate to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Salary Reduction for Disciplinary Reasons

Applies to:

Each position classified under the state's position classification plan, but only to a state employee employed in the executive or judicial branch of state government. See the discussion earlier in this guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252, 659.258, 815.208(e) (Vernon Supp. 2000).

Discussion:

The administrative head of a state agency may reduce an employee's salary for disciplinary reasons, if warranted by the employee's performance, to a rate in the employee's designated salary group not lower than the minimum rate. As the employee's performance improves, the agency may restore the employee's pay to any rate that does not exceed the employee's prior salary rate without accounting for the restoration as a merit salary increase. For these purposes, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of salary reductions for disciplinary reasons to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Salary Supplementation

Applies to:

- A. Each state employee employed by a state agency whose position is classified under the Position Classification Act (PCA) or whose exempt position is funded by the General Appropriations Act (GAA).
- B. Each state agency or institution of higher education that uses funds appropriated by the GAA to pay the salary of a person who is paid a classified or exempt salary.
- C. Each general academic institution, health center, health science center, medical education program, or system office.
- D. Texas State Technical College.

Sources:

- A. TEX. GOV'T CODE ANN. §§ 658.001(2), 659.020 (Vernon Supp. 2000).
- B. Section 9-3.03 of the GAA.
- C. Article III, Sections 3(1), 5(2)-(3) of the GAA.
- D. Riders 10-11 in the Special Provisions Relating Only to Components of Texas State Technical College in Article III of the GAA.

Discussion:

- A. A state employee employed by a state agency whose position is classified under the PCA or whose exempt position is funded by the GAA may not receive a salary supplement from any source unless a specific grant of authority to do so is provided by the GAA or other law. In this paragraph, **state agency** means:
 - A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000); or
 - The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the judicial branch.
- B. The GAA says that the funds appropriated by the GAA to a state agency or an institution of higher education may not be expended for payment of salary to a person whose classified or exempt salary is being supplemented from other than appropriated funds until the amount and sources of salary being paid from other sources has been reported to both the secretary of state and the Comptroller.

The report submitted to the Comptroller must be received not later than September 15 of each fiscal year to allow for the processing of September payrolls.

The following information must be provided for each individual whose salary is being supplemented. For institutions of higher education, benefit replacement pay should be included as part of base salary:

- Name;
- Title;
- Base salary;
- Supplement amount;
- Sources of the supplement; and
- Social security number.

Use the form in Exhibit 2.6 (See Exhibit 2.6 next page) to report all salary supplementation information. Submit the form to both the secretary of state and the Comptroller. Ensure that the Comptroller receives the form not later than September 15 of each year.

The Comptroller must receive any changes that occur to the information submitted on the form during a fiscal year no later than the 14th day of the month in which the change becomes effective. If no officer or employee of your agency or institution receives a reportable salary supplement, then mark the form “N/A.”

Exhibit 2.6 – Salary Supplementation Report for Fiscal 2000

Salary Supplementation Report for Fiscal 2000

Agency/Institution Number: _____

Agency/Institution Name: _____

NAME: _____ TITLE: _____

SOCIAL SECURITY NUMBER: _____ - ____ - _____

*BASE SALARY: SUPPLEMENTAL AMOUNT: TOTAL:

Salary Supplementation Sources: _____

* For Higher Education agencies only, this amount is the base salary from the GAA plus any Benefit Replacement Pay (BRP) received. This amount does not include longevity or hazardous duty pay.

NAME: _____ TITLE: _____

SOCIAL SECURITY NUMBER: _____ - ____ - _____

*BASE SALARY: SUPPLEMENTAL AMOUNT: TOTAL:

Salary Supplementation Sources: _____

* For Higher Education agencies only, this amount is the base salary from the GAA plus any BRP received. This amount does not include longevity or hazardous duty pay.

Name and Title (Please Print or Type)

Authorized Signature

Date

Return to both of the following addresses:

Comptroller of Public Accounts
USPS/HRIS Statewide Reporting
Section
111 East 17th Street, Room 910
Austin, Texas 78774-0001

Secretary of State
Statutory Documentation Section
P.O. Box 12887
Austin, Texas 78711-2887
Interagency Mail: Rudder Building
1019 Brazos St., Room 214

The form must be sent to the two addresses below:

Comptroller of Public Accounts
USPS/HRIS Statewide
Reporting Section
111 East 17th Street, Room 910
Austin, Texas 78774-0001

Secretary of State
Statutory Documentation
Section
P.O. Box 12887
Austin, Texas 78711-2887

Interagency Mail: Rudder
Building

1019 Brazos Street, Room 214

- C. The GAA authorizes a general academic institution, a health center, a health science center, or a medical education program to use institutional funds to pay a supplement to the president of the institution, center, or program. In this paragraph, *general academic institution* means only the institutions listed in Article III, Section 3(1) of the GAA.

The GAA authorizes a system office to use institutional funds to pay a supplement to the chancellor of the system.

- D. The GAA authorizes a campus of the Texas State Technical College (TSTC) to pay a supplement to its president from private sources.

The GAA authorizes the system office of TSTC to pay a supplement to its chancellor from private sources.

Selective Service Registration

Applies to:

Each state agency or institution of higher education.

Sources:

TEX. GOV'T CODE ANN. § 651.005 (Vernon Supp. 2000), as added by Act of May 21, 1999, 76th Leg., R.S., ch. 171, § 1, 1999 Tex. Gen. Laws 640, 640. See Op. Tex. Att'y Gen. No. JC-183 (2000).

Discussion:

An agency may not hire a person as an employee if the person is of the age and gender that would require a person residing in the United States to register with the selective service system under federal law, unless the person presents proof of the person's:

- **Registration with the selective service system as required by federal law; or**
- **Exemption from registration with the selective service system. The preceding sentence does not apply to a person employed by a state agency before September 1, 1999, as long as the person's employment by the agency is continuous.**

The preceding paragraph applies to an agency in any branch of state government.

Temporary Assignments

Applies to:

Each employee employed in the executive or judicial branch of state government whose permanent position is classified under the state's position classification plan. See the discussion earlier in this guide entitled *Legislative Branch, Employees in the*.

Sources:

TEX. GOV'T CODE ANN. §§ 659.251(a), 659.252, 659.260, 815.208(e) (Vernon Supp. 2000).

Discussion:

To facilitate a state agency's work during an emergency or other special circumstance, an employee may be temporarily assigned to other duties for a period not to exceed six months. During the reassignment period, the employee may receive the appropriate rate of pay for the temporary position if the position is classified in a salary group with a higher minimum salary rate. An employee may not be assigned to temporary duties under this paragraph for more than six months during a twelve-month period.

While an employee is temporarily assigned in accordance with the preceding paragraph, the state agency may not award a merit increase to the employee, promote or demote the employee, or reduce the employee's salary.

An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by the General Appropriations Act for the administrative head of the agency.

For the purpose of these temporary assignment provisions, **state agency** means the state department, institution, entity, or other agency in the executive or judicial branch of state government that employs a state employee.

The Employees Retirement System of Texas (ERS) is exempt from this entire discussion of temporary assignments to the extent the ERS board of trustees determines an exemption is necessary for the performance of fiduciary duties.

Twice-Monthly Payrolls

Applies to:

Each state agency or institution of higher education.

Source:

TEX. GOV'T CODE ANN. § 659.082 (Vernon Supp. 2000).

Discussion:

An employee is entitled to be paid employment compensation twice a month if the employee meets all the following criteria:

- 1 The employee is employed by:
 - The Texas Department of Mental Health and Mental Retardation; or
 - The Texas Department of Transportation; or
 - The Texas Department of Human Services; or
 - The Texas Workforce Commission; or
 - The Department of Public Safety of the State of Texas; or
 - Any other state agency designated by the Comptroller's Office.
- 2 The employee holds a classified position under the state's position classification plan.
- 3 The employee's position is classified below salary group A12 under classification salary schedule A in the General Appropriations Act.
- 4 The employing state agency satisfies the Comptroller's requirements related to the payment of compensation twice a month.
- 5 At least 30 percent of the eligible employees of the employee's employing agency choose to be paid twice a month

Employees of an institution of higher education, as defined by TEX. EDUC. CODE ANN. § 61.003 (Vernon Supp. 2000), may be paid twice a month at the election of the employing institution. Criteria 1-5, above, do not apply.

An agency must submit a written request to the Comptroller's claims division before implementing semi-monthly payrolls. The request must specify how the preceding requirements are satisfied.

An employee who is entitled to be paid twice a month may continue to be paid once a month, at the employee's discretion.

See the discussion earlier in this guide about monthly payrolls.

Underpayments of Compensation, Correcting

Refer to the *Excess Payment of Compensation, Recouping* topic in *Chapter 4 – Deductions* for details on the payroll deduction for recouping an excess payment of compensation.

Applies to:

Each state agency.

Source:

TEX. GOV'T CODE ANN. § 659.006 (Vernon Supp. 2000).

Discussion:

Section 659.006, Government Code, requires the Comptroller by rule to prescribe procedures for state agencies to follow in making adjustments to payrolls for the pay period immediately following the period in which an inaccurate payment or deduction is made or in which other error occurs. An inaccurate or erroneous payment could be either an overpayment or an underpayment.

The Comptroller believes, however, that Section 659.006 was superceded on January 1, 2000, concerning overpayments of compensation. The payroll deduction authorized in Chapter 666, Government Code, is the later express of legislative intent. Final legislative action on Chapter 666 occurred on May 30, 1999, while final action on Section 659.006 occurred on May 11, 1999. Therefore, an overpayment of compensation must be recouped through the payroll deduction authorized in Chapter 666. The remainder of this discussion does not apply to overpayments of compensation.

Each state agency must ensure that its internal operating procedures have quality control measures that will detect any underpayments of compensation to officers and employees.

A state agency must correct an underpayment of compensation for a particular pay period not later than the following pay period. If delaying the correction until the following pay period would impose a hardship on the employee, the agency must promptly correct the underpayment through a supplemental payroll.

This paragraph applies when a state agency does not detect an underpayment of compensation in time to correct it during the pay period following the pay period for which the underpayment occurred. The agency must promptly correct the underpayment by submitting a supplemental payroll.

A state agency that corrects an underpayment of compensation must retain certain supporting documentation about the correction in its files. The documentation must state:

- The amount of the underpayment; and
- The pay period for which an underpayment of compensation occurred; and
- The pay period for which compensation is increased to eliminate the prior underpayment of compensation; and
- The number of working hours that is being used to calculate the amount needed to eliminate the underpayment, if the underpayment was caused by paying the employee for fewer hours than the number of hours actually worked.

This paragraph applies if an underpayment of compensation resulted from a state agency paying a state employee for fewer hours than the number of hours actually worked. When calculating the dollar amount of the underpayment, the agency shall use the hourly rate of pay that was in effect during the pay period the hours were worked. This is because the hourly rate will vary from pay period to pay period depending on the number of working hours in each period. A work day means any day except Saturday or Sunday.

A state agency that corrects an underpayment of compensation must adjust all relevant payroll accumulators, such as agency-paid taxes, employee-paid taxes, and limits on benefit replacement pay and deferred compensation. The agency must maintain sufficient records about these adjustments to prove compliance with state and federal laws and to support an audit.