

Emergency Leave: Death of Employee

revised: 08/01/2014

In the unfortunate and rare circumstance that an employee of the Office of the Attorney General (OAG) dies while employed, the deceased employee's division management shall promptly notify Executive Administration and the Director of Human Resources of the employee's death and provide any relevant information. Division management shall coordinate with the surviving family the transfer of personal effects and shall submit a final personnel action form to the Human Resources Division.

The First Assistant Attorney General or designee may grant up to four hours of emergency leave to employees who attend the funeral or memorial service of the deceased employee. Division management shall submit a request for such emergency leave to the Director of Human Resources who shall forward the request to Executive Administration. If approved, the Human Resources Division shall make appropriate entries into the e-Leave system.

If the death resulted from an injury in the workplace, worker's compensation reporting procedures shall be followed.

Emergency Leave: Death in Family

revised: 05/01/2013

An employee is eligible for Emergency Leave due to the death of the employee's spouse, child, parent, sibling, grandparent, or grandchild or a child, parent, sibling, grandparent, or grandchild of the employee's spouse. For the purpose of this policy, the term sibling includes an employee's stepbrother or stepsister. The employee, however, is not eligible for this leave if he/she is in an unpaid absence status at the time the Emergency Leave is to commence.

When an employee is absent from work due to a covered death, a leave request for Emergency Leave (EM) must be entered into the e-Leave system. The request must clearly provide the family relationship of the deceased to the employee in the comments section. Verification of the need for the leave may be required. Division management may grant a maximum of three days of Emergency Leave. If out-of-state travel is

involved, an additional two days may be granted at the discretion of division management.

If extenuating factors exist, additional time may be requested in writing to the employee's division chief or designee and appropriate Executive Deputy. The division chief or designee and Executive Deputy shall review the request and submit it with their recommendation to the First Assistant Attorney General or designee for approval or denial. After approval or denial, the documentation shall be forwarded to the Human Resources Division (HRD), which shall notify the Executive Deputy, division management, and employee of the decision. HRD shall retain the relevant documentation for entry into the e-Leave system.

Emergency Leave: Other

revised: 05/01/2013

The First Assistant Attorney General or designee may grant paid Emergency Leave for any reason determined to be good cause. A request for Emergency Leave must be submitted in writing by the employee to his/her division chief or designee, who shall forward it to the appropriate Executive Deputy. The request must clearly provide the reason(s) for the leave and must include the specific date(s) for which the Emergency Leave is requested. Verification of the need for the leave may be required.

The division chief or designee and Executive Deputy shall review the request and forward it with their recommendation to the First Assistant Attorney General or designee for approval or denial. After approval or denial, the documentation shall be forwarded to the Human Resources Division (HRD), which shall notify the Executive Deputy, the division chief, and employee of the decision. HRD shall retain the relevant documentation for entry into the e-Leave system.

In special circumstances, a request for Emergency Leave may be initiated by division management, the Director of Human Resources, or an Executive Deputy.

'Emergency leave' widely misused by Texas agencies to pay confidential settlements, keep former workers on payrolls



Tina Carnes, a former employee of the Teacher Retirement System, is one of seven employees who received months of "emergency pay" as part of a departure settlement with TRS.

By J. DAVID McSWANE and LAUREN McGAUGHYAustin Bureau

AUSTIN — Directors at several Texas agencies are skirting state law to keep employees on the payroll months after they've left their jobs, and records obtained by *The Dallas Morning News* show those deals are often attached to settlements designed to keep ex-employees quiet.

In the last two years, at least seven former employees of the Teacher Retirement System were given as many as six months of paid ["emergency leave" in exchange for signing legal documents](#) in which they promised not to discuss the deals or to sue the agency.

Emergency leave is supposed to give state employees a financial cushion — typically a few days' pay — in the event of a death in the family, health issues or another extraordinary event.

But lawmakers are now looking at how agency chiefs use leave to cut questionable deals after *The News* found a widespread and un-policed practice of [paying scores of former employees tens of thousands of dollars](#) — for weeks and months of work that never happened.

Newly obtained state records indicate TRS, the attorney general's office, the Health and Human Services Commission, the Department of Family and Protective Services, and probably others, are using this once-obscure benefit to settle or pre-empt employment disputes.

"It's just unbelievable, and it's illegal," said Buck Wood, a former Texas comptroller official and an expert in state finance and ethics laws.

When *The News* described the settlement documents, Wood said, "That's just hush money."

Other state offices — such as the Texas Department of Agriculture — have used emergency leave to provide severance with no legal strings attached.

Wood noted that there is no mechanism in state law that allows agency chiefs to dole out severance, but because the law that created emergency leave is vague, "officeholders think, well, I can do whatever I want to."

"This is a dangerous thing, and I think it's clearly illegal," Wood said. "It can be totally arbitrary and discriminatory."

Agency heads have virtually unfettered ability to give out emergency leave to whomever, for whatever reason, *The News* found; the law only requires that leaders make sure employees give "good cause" for their leave.



Sen. Jane Nelson, R-Flower Mound, says she plans to rewrite the law and crack down on abuse of emergency leave.

Sen. Jane Nelson, chairwoman of the Senate Finance Committee, and House Speaker Joe Straus have already [vowed to rewrite the law and crack down](#) on abuse of emergency leave.

The News shared with Nelson several settlement agreements in which emergency leave was given as compensation.

"The more we learn, the more concerned I become about this issue — which appears to be occurring across state government," the Flower Mound Republican said. "We need a legislative fix, and I am in the process of researching ways to tighten up the law during the next legislative session."

Questionable use

Questions about the use of emergency leave surfaced last month when *The News* reported that [Attorney General Ken Paxton had been paying two high-level staffers for weeks](#) after they had publicly resigned.

A third staffer, attorney [Martha Fitzwater Pigott](#), received six months of paid leave last year, records show. Pigott, one of several lawyers brought in to negotiate a problem-plagued \$310 million technology contract, stopped working Sept. 1.

But it wasn't until Feb. 12 that Pigott informed the agency by her personal email account that she was officially resigning and transferring to another state agency.

An attorney general's spokeswoman has said the agency is "prevented from commenting in this matter."

Using the open records law, the newspaper requested any documents related to a settlement between the agency and Pigott. The attorney general has not yet produced any records but informed Pigott's attorneys of the request, stating, "The requested files include records that may implicate the interests of your client."

Documents indicate Paxton's office has previously used emergency leave as part of a settlement. Records show Madeleine Connor, a former AG litigation attorney, stopped working May 18, 2015, but stayed on the payroll until Aug. 7.

At least a month of that was leave given for "good cause," but her resignation letter, dated June 8, references a settlement agreement that stipulated she would be paid until Aug. 8 or until she found another job as a private attorney or state employee.

Teacher Retirement System

Citing personnel rules, TRS spokesman Howard Goldman wouldn't provide details about seven settlements obtained through the open records law, and he denied that his agency has used emergency leave as severance.

"As a general rule, severance is a payment, usually based upon a formula tied to length of service, that is payable to an employee upon separation of employment and that is evidenced in a written policy or employment agreement," he said. "TRS does not provide severance pay to any employee."

But documents clearly indicate emergency leave was used as payment in settlement agreements.

For instance, on Oct. 27, TRS Executive Director Brian Guthrie signed a four-page agreement with Cheryl Hines, a former investment manager, which states: "Hines hereby tenders her voluntary resignation from employment ... effective on the close of business on April 30, 2016."

"Hines's last day work in the office shall be October 5, 2015," the settlement continues.

After Hines collected her accrued vacation and leave time, she was promised and received four months of emergency leave pay, records show.

In all, seven TRS employees received about \$235,000 in salary, not including benefits, which typically cost about one-third of a person's total salary.

"In the instance of the former employees you have asked about, their separation from TRS was deemed to be in the best interest of TRS and its members," Goldman said in an email. "Therefore, negotiated settlement agreements were signed, which released TRS from any legal claims by these individuals."

Statewide problems

Through the public records law, *The News* obtained data from the comptroller that tracked employees who had received significant emergency leave. While about 100 agencies report such data to the comptroller, that request returned only 18 that had given significant emergency leave.

The News then analyzed more than 5,000 leave entries from September 2013 until now and found that the Agriculture Department doled out the most emergency leave on average on a per-employee basis. In his first few months in office, Commissioner Sid Miller continued to pay four staffers long after they were let go.

Records indicate Miller's office used emergency leave as a financial send-off for employees who were being fired.

In the last three fiscal years, state agencies have paid at least 5,500 hours in emergency leave to employees in their final three weeks before they left state work, *The News* found by evaluating data from the comptroller's office.

Recent reports by the *Austin American-Statesman* and the [Houston Chronicle](#) found that emergency leave isn't the only way that agency heads can effectively pay loads of severance despite state law.

Land Commissioner George P. Bush and his predecessor, Jerry Patterson, together arranged to keep 40 employees on the General Land Office payroll for months after they were let go.

Those employees were driven out of their jobs last year as Bush took control of the office and, in return, they collected about \$655,000 in salary while they weren't working, reports said.

Yet Bush and Patterson didn't use emergency leave as compensation in those settlements. Instead, as the [Statesman](#) reported, Bush and Patterson simply kept those employees on the payroll — they were collecting salary and accruing vacation — and turned in false time sheets to the comptroller.

A spokesman for the General Land Office has [publicly defended that practice](#), saying it protected the office from costly employment lawsuits.

But settling or pre-empting potential lawsuits should be left to the attorney general, Wood said.

The Houston Chronicle responds to the Texas General Land Office

By [Brian M. Rosenthal](#)

Updated 6:52 pm, Wednesday, May 25, 2016

The Texas General Land Office recently published [a response](#) to [our story in Sunday's edition](#) regarding the office's practice of allowing fired former employees to remain on the payroll if they sign an agreement promising not to sue the office or Land Commissioner George P. Bush.

In all, we reported, Bush "has directed the General Land Office to keep at least 40 people on the payroll for as long as five months after ending their employment." The total cost of doing that, we reported, has been nearly \$1 million. We also quoted several experts who said the practice was not authorized by state law.

The General Land Office's response disputed that 40 people were paid after the end of their employment, that it cost \$1 million and that the practice was not authorized by state law.

It is important to note that none of those concerns was raised by the agency prior to the publication of our story. Despite numerous phone calls, emails, and a hand-delivered letter detailing all of our findings – including a list of all 40 of the employees that we believed signed the separation agreements – the office chose not to comment for our story. To date, the office also has not contacted us directly about its concerns.

Still, the Houston Chronicle takes all concerns about accuracy extremely seriously. We have carefully reviewed the issues raised. Below are the complaints made by the General Land Office, followed by our responses:

From the General Land Office complaint:

"First, we'll deal with his numbers. He's off. Way off. Rosenthal alleges 40 separation agreements, costing \$655,000, and then rounds that number up to one million dollars. In what mathematical universe is it acceptable to round up by more than 25% just to land on a headline-grabbing number?"

Chronicle response:

Describing \$655,000 as "nearly \$1 million" would indeed be an inappropriate exaggeration. But to be clear, the Chronicle did not do that. The \$655,000 statistic covers only the amount in SALARY that the General Land Office paid to the fired employees who were allowed to remain on the payroll. The statistic does not include any of the benefits that the employees received while they remained on the payroll, including health insurance coverage, pension contributions and additional vacation time accruals (which

the employees were allowed to receive as a lump sum cash payment when they finally exited the payroll). Each of those costs taxpayers, and it adds up to a significant amount.

[A report released by the State Auditor's Office last month](#) found that, on average, salary makes up 65.2 percent of annual compensation for state workers. Based on that report, we calculated that the \$655,000 statistic was only about 65 percent of the amount of money that was spent on the former employees, making the overall cost around \$1 million.

(Note: To check our math, [please see the table](#) that we published online with our original story listing the names of the former employees, the amount of time they were allowed to remain on the payroll, their monthly salaries and their total cost in salary.)

From the General Land Office complaint:

"Rosenthal's numbers are wildly off. There have actually been 26 separation agreements under Commissioner Bush's tenure. Cost: \$383,074.12 in gross salaries."

Chronicle response:

This appears to be the most significant area of disagreement: The General Land Office says there have only been 26 separation agreements in Bush's tenure, while we reported Bush has directed the office to enter into 40 of them. The reason for the discrepancy appears to be that the office is not counting agreements that were signed at the very end of 2014, after Bush had been elected land commissioner but just before he had been sworn in.

However, as [we have previously reported](#) – based on interviews with former Commissioner Jerry Patterson and many other officials leading the agency at the time – Bush and his transition team informally took the reins before the swearing in. Patterson said specifically that he entered into the separation agreements completely at Bush's direction, and several of the employees who took the deals said it was offered to them by Bush's people. To blame Patterson for the agreements would be inaccurate.

(Note: To check our work, please [see all 40 of the separation deals](#), which we posted online.)

From the General Land Office complaint:

"As for the legality of separation agreements, two attorney general opinions (Opinion No H-786 from February 24, 1976 and Opinion No. H-1186 from June 17, 1978) speak to the authority of executives when setting policies for state employees. The Land Office established clear and consistent policies as these opinions specify. Its actions have been consistent and fair. They have also been wise. Just one frivolous lawsuit could cost the Land Office, and therefore Texas taxpayers, far more than has been used in all of the past year's separation agreements combined. Voters want state government to operate more like businesses do. These separation agreements, as even Rosenthal notes, are consistent with how businesses routinely handle separations. They save the state enormous amounts of money while being fair to separated employees. According to Thompson Reuters Employment Practice Liability: Jury

Award Trends and Statistics (2013 edition), the median judgment in employment lawsuits is \$200,000 not including attorney fees. Further, employers end up paying out more than \$500,000 in 25% of cases. The Land Office has overseen more than 100 departures in addition to the 26 separations with zero lawsuits during Commissioner Bush's tenure."

Chronicle response:

Our story did not attempt to assess the wisdom of state law governing separation agreements, only to report on whether the General Land Office's conduct complied with the law. To that end, it is worth looking at opinions issued by the attorney general. However, neither of the 1970's-era opinions listed by the agency have anything to do with separation agreements.

[No. H-786](#) says universities may continue paying a professor after his or her termination if (and only if) the employment agreement that the professor signed upon taking the job said that he or she was entitled to payment for the full term of the job. [No. H-1186](#) says agencies may pay a former employee back wages if the person has made a claim of employment discrimination under the Civil Rights Act and has proven the claim to be valid.

The specificity of these items is important. According to the former state officials, employment lawyers, union leaders and ethics experts that we interviewed, state law makes clear that agencies may only spend taxpayer money on items that are specifically authorized by law. There is no specific provision authorizing payments for separation agreements, which led those experts to question the agreements.

There also is no law explicitly declaring separation agreements illegal, but there is a well-established prohibition on "severance payments," and there is evidence that separation agreements are severance payments – from an opinion issued by an attorney general in 2000. In [Opinion No. JC-0221](#), John Cornyn said "a payment to a terminated superintendent described as a settlement of actual or threatened litigation is a section 11.201(c) severance payment if there is no actual or bona fide claim."



Attorney General Ken Paxton still paying top aides who left agency a month ago



Texas Attorney General Ken Paxton's office has had several high-profile departures and hires in recent weeks. (2015 File Photo/The Associated Press)

AUSTIN — The state is paying thousands of dollars in salaries and benefits to at least two former high-level staffers in Attorney General Ken Paxton's office who haven't worked there for over a month.



Charles "Chip" Roy

Charles "Chip" Roy resigned as first assistant attorney general March 9 but remains on the state's payroll. He received his full month's salary of \$16,220.62 on April 1, according to the state comptroller, and remains on the payroll as an employee of the state even while working a new job for a national political committee.

Roy declined to comment about the payment arrangement, which the agency confirmed Wednesday after *The Dallas Morning News* raised questions. Despite its earlier public statement that Roy resigned, an agency spokeswoman said Thursday that he's also on "emergency leave."

"Roy resigned on March 9th. He is currently on emergency leave through June 10th," spokeswoman Cynthia Meyer said late Thursday.

If Roy's arrangement continues until then, he will make \$48,660 for the three months of emergency leave.

The agency at first offered no further explanation of the reason for the leave. When asked to clarify the emergency, Meyer said: "I'm not sure the answer."

Texas' "emergency leave" law says a state employee who has experienced a death in the family can take time off without seeing his or her pay cut. Agency heads also can approve other reasons for

emergency leave if the employee “shows good case to take emergency leave.”

Employment law prohibits state workers from pulling down full-time salaries if they don’t work at least 40 hours a week for a public entity. There is no severance for workers who leave state employment, and the law that gives agency heads discretion in granting administrative leave also caps such time at 32 hours per year.

Austin-based campaign finance and ethics attorney Buck Wood questioned the arrangement.

“So, the emergency wasn’t so great that this person can’t work, or has any problems working? They just want to give her or him the money,” said Wood, who was not told the name of the individual or the agency in question. “This person obviously didn’t provide ‘good cause’ because they’re working. They’re just feeding you a line.”

Roy’s resignation was sudden. At the time, Paxton made no mention of any emergency and hired Roy’s replacement the same day. The next day, Roy took a job as executive director of a super PAC supporting Sen. Ted Cruz’s presidential campaign.

The comptroller’s office, which cuts checks for state employees, was unaware Roy and others who had resigned from the attorney general’s office were still being paid until *The News* contacted them.



Allison Castle

Former communications director Allison Castle left the agency March 10, according to media reports. But, like Roy, she remains on the payroll. She was paid her full monthly salary of \$12,825 on April 1.

Castle did not return multiple requests for comment. Meyer, Paxton’s spokeswoman, said she could not confirm whether any other agency employees were also on emergency leave like Roy.

“We have more than 4,000 employees, so in order to answer your question with accuracy, we’d have to look into it and get back to you,” she said.

Other staffers who recently left the agency do not continue to draw salaries or benefits. Deputy Press Secretary Katherine Wise left the agency April 10.

The comptroller’s office confirmed that its system showed Wise had moved to another agency within

state government. She is now working for Sen. Joan Huffman, R-Houston.

Bernard L. McNamee, Paxton's former chief of staff who announced in November that he would soon be leaving the agency to return to private practice, received a lump sum for his remaining vacation and leave time and was removed from the state's payroll by December.

Paxton's office has had several high-profile departures and hires in recent weeks, including the resignations of Roy and Castle, who were replaced by Jeff Mateer of the conservative law firm the Liberty Institute and Marc Rylander, a former pastor at Prestonwood Baptist, the Plano-based megachurch Paxton attends.

As his agency undergoes some top-level turnover, Paxton is embroiled in multiple legal battles over his failure to register as a securities adviser while he was a state representative. This week, federal officials levied civil fraud charges against him, adding to the three state criminal indictments he was already facing.

Land Office spends \$1 million to pay ex-workers for not suing over their terminations



Photo: LM Otero, Associated Press

Texas Land Commissioner George P. Bush speaks to delegates at the Texas Republican Convention Thursday, May 12, 2016, in Dallas. (AP Photo/LM Otero)

AUSTIN - Texas Land Commissioner George P. Bush has spent nearly \$1 million in taxpayer money to entice dozens of people fired by his administration to agree not to sue him or the agency, a practice that may run afoul of a ban on severance pay for state workers.

Bush, a first-term Republican, has directed the General Land Office to keep at least 40 people on the payroll for as long as five months after ending their employment, according to an analysis of records obtained by the Houston Chronicle. The ex-staffers did not have to use vacation time and, in fact, continued to accrue more time for as long as they were on the payroll. In return, they agreed in writing not to sue the agency or discuss the deal.

Many of the recipients were top aides to former Land Commissioner Jerry Patterson who were fired during an agency "reboot" in which [Bush replaced more than 100 employees](#).

Such separation arrangements are made frequently in the corporate world but are not allowed in Texas

government, where there is no severance and staffers generally are required to work to be paid, according to employment lawyers, union leaders and former state officials.

"I can understand the thinking of an agency head who wants to get rid of someone and thinks that this is an easy way to do it, but this is not the way to do it," said Buck Wood, an ethics expert and former deputy state comptroller, noting the detailed rules that govern how agencies can spend money do not authorize that purpose. "Keeping someone on the payroll when they're not coming to work so you can avoid the hassle of a lawsuit is just illegal."

Related

Malinda Gaul, a San Antonio employment lawyer who has represented state workers for 33 years, said she had never heard of such an arrangement.

Spokespeople for the General Land Office and Bush's political shop did not return multiple messages seeking comment, nor did they respond to a hand-delivered request for comment.

The separation agreements state that they were meant "to give (employees) time to seek other employment and to avoid the potential expense to the GLO of any administrative or judicial proceedings related to (employees') employment."

'Emergency leave'

Many of the agreements followed termination letters that said employees could choose to be fired or to agree to resign, sign the deal and take the extra pay while not working. Almost everybody offered the deal accepted it, records indicate.

The agency's practices appear to be part of a pattern of Texas state officials paying certain departing employees for different reasons and through different avenues.

Over the previous decade, [agencies have spent](#) nearly \$50 million on bonuses for staffers who left state government shortly thereafter. Much of it was given to favored aides by officials who were on the way out themselves, such as former Gov. Rick Perry, who paid more in bonuses in one day during his last month in office than he had in the preceding four years combined.

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And more recently, Attorney General Ken Paxton [drew scrutiny](#) for continuing to pay three top aides after

their resignations by putting them on "emergency leave," which agency heads can use when they believe there is "good cause." Paxton's office has not explained the leave other than to tell a conservative website the attorney general "acted in a compassionate, legal and ethical manner" in granting pay to staffers "who had worked tirelessly for the state."

State lawmakers last week said [they plan to look into](#) limiting the use of emergency leave for departing staffers.

Costly practice

A Chronicle analysis found the practice already is relatively rare, however. Over the past three years, about 20 of the 120 state agencies in Texas have had at least 133 staffers end their time on the payroll with an emergency leave stint of two weeks or more.

In some cases, the leave appears to have been used to placate disgruntled departing employees and preventing them from suing.

The Attorney General's Office, Teacher Retirement System and Water Development Board, three of the biggest users of emergency leave, all said they have agreed to give the leave in deals with staffers who promised not to sue.

The land office has spent far more on payments for departing employees than any other agency has spent on emergency leave for ex-staffers, even agencies with far more workers, according to the Chronicle's analysis.

The state Department of Family and Protective Services, which has 11,000 employees, has given out the most emergency leave to ex-staffers - about 1,375 workdays over the past three years, including 500 days for one worker during an internal investigation.

The General Land Office, which has 600 employees, has given out nearly 1,850 days of pay for ex-staffers in just the year and a half of Bush's tenure, costing taxpayers at least \$655,000 in salaries, plus the additional costs for benefits that the ex-staffers received in that time, including leave accruals, health insurance and retirement contributions. A recent report by the state auditor's office said those benefits are worth about a third of an employee's total compensation.

Appropriate use?

Among those who got paid for not working under a separation deal were Christopher Burnett and Julie Masek, the director and the deputy director of the agency's Office of Compliance and Ethics. Bush fired both of them last month, just a year after announcing the creation of the ethics office.

The ex-staffer who received the most money was Erin Guillette, former Commissioner Patterson's director of executive administration, who got more than \$40,000 in salary while not working for nearly four months.

Patterson's former general counsel, William Warnick, got the longest stint of pay for not working, five months, under an arrangement in which his salary was reduced so he could make it to retirement age.

On average, the ex-staffers each received two months of pay after leaving the agency.

Steve Aragon, a former general counsel for the Health and Human Services Commission, said he thinks there are justifiable reasons to pay employees for not working, including to prevent litigation in cases in which it was clear that a staffer likely would not come back. However, he said, it is not something that state agencies should do frequently.

"These situations should be exceptional and would not be expected as a matter of routine," Aragon said.

Others objected to any use of the practice, including Seth Hutchinson, a spokesman for the Texas State Employees Union.

"It's not an appropriate use of state funds," Hutchinson said. "If people are being wrongfully fired, they're being wrongfully fired, and they shouldn't be using state funds to cover it up."

After being told that it is not uncommon in the corporate world, Hutchinson scoffed.

"State government should be held to a higher standard of accountability," he said.



Exclusive: Dozens of state workers at several agencies paid 'leave' after departing jobs



The Texas State Capitol building pictured at dusk on Saturday, April 4, 2015. (Matthew Busch/Bloomberg)

By J. DAVID McSWANE and LAUREN McGAUGHY

AUSTIN — State employees in Texas don't get severance pay when they leave their jobs. In fact, it's generally required that they work 40 hours a week to receive a full paycheck. But that isn't stopping top state officials, including Attorney General Ken Paxton and Agriculture Commissioner Sid Miller, from doling out hundreds of thousands of dollars in "emergency leave" to state workers in the weeks and months after they're let go. On Jan. 1, for instance, Cheryl Hines left her job as an investment manager at the Teacher Retirement System. But she received the same pay and benefits for another four months, until April 30.

Hines, who received \$58,000 worth of emergency leave, is just one of dozens of workers who received substantial paid leave within their final three weeks of work, a *Dallas Morning News* data analysis shows.

At least eight retirement system employees — including high-paid investment portfolio managers, directors or lawyers — received between two and six months of paid leave before they were officially terminated.

That's a cost to taxpayers of about \$235,000, not including benefits, for work that never happened.

Emergency leave hours

Since September 2013, state agencies have paid at least 5,500 "emergency leave" hours to 63 workers in their final three weeks of state employ. These are the agencies using the most emergency leave:

Agency	Employees	Paid leave hours
Texas Water Development Board	9	956
Teacher Retirement System	8	910
Department of Information Resources	7	672
Texas Department of Insurance	4	490
Texas Medical Board	4	464
Texas Alcoholic Beverage Commission	4	445
State Office of Administrative Hearings	5	389
Texas Dept. of Agriculture	2	268
Texas School F/T Blind & Vis. Imp.	6	247
Texas Lottery Commission	3	215
Secretary of State	3	192
TOTAL HOURS		5,248

Teacher Retirement System leave

Eight high-paid investment portfolio managers, directors or lawyers at the Teacher Retirement System received between two and six months of paid leave just before they were terminated.

Employee/title	Months of leave	Monthly pay	Cost to taxpayers
Cheryl L. Hines Portfolio Manager IV	4	\$14,583.3	\$58,333
Tina Marie Carnes General Counsel III	6	\$7,726.5	\$46,359
Cynthia Louise Collins General Counsel V	3	\$11,793.8	\$35,381
Terri L. Krumnow Investment Analyst II	6	\$5,525	\$33,150
Eric M. Jackson Network Specialist VI	3	\$8,138.43	\$24,415
Marshall Reid Portfolio Manager II	2	\$11,744.3	\$23,489
Christine Pack Retirement Systems Benefits Specialist	4	\$3,423.09	\$13,692
TOTAL COST			\$234,820

SOURCE: Texas Comptroller of Public Accounts

NOTE: Months are rounded figures and cost to taxpayers doesn't include benefits

The News tracked more than 5,000 leave entries by 18 agencies from September 2013 until now and found that the Agriculture Department doled out the most emergency leave on average, on a per-employee basis. In his first few months in office, Commissioner Sid Miller continued to pay four staffers long after they were let go.

That decision cost taxpayers about \$89,000, not including benefits.

Emergency leave Emergency leave is supposed to give state employees a financial cushion in the event of a death in the family, health issues or another extraordinary event. But revelations that the attorney general had quietly kept three ex-staffers on his payroll for months raised concerns that it's being used in many cases as a financial send-off. Agency heads have broad discretion to decide when and why to give out emergency leave. In fact, state law only limits doling out the once-obscure benefit by requiring heads to make sure employees give "good cause" for their leave. No lawmakers or state agency scrutinize its use. Through an aide, Paxton has defended his decision to [dole out emergency leave to two ex-staffers](#) by calling it a "compassionate" way to continue to pay people "who worked tirelessly" for the state. The agency has not elaborated on the circumstances. A spokesman for the Teachers Retirement System also would not say what leaders there consider "good cause," but records show that when they

find it, taxpayers pay generously. In 2014, portfolio manager Marshall Reid got two months' salary, about \$24,000, and attorney Tina Marie Carnes got six months' pay, about \$46,000. Terri Krumnow, an investment analyst, got six months' worth of leave in 2015, about \$33,000. "The executive director grants emergency leave to employees in accordance with state law and established policies, and when he determines that there is good cause to do so and it is in the best interest of the system," said system spokesman Howard Goldman. To be sure, state data show hundreds of examples where an employee received emergency pay for what appear to be brief family emergencies, such as a day for attending to a death in the family or when state government closed down due to bad weather. But those instances all have one thing in common that the others lack: The employee came back to work.

In the last three fiscal years, state agencies have paid at least 5,500 hours in emergency leave to employees in their final three weeks before they left state work, *The News* found by evaluating data from the comptroller's office.

The News contacted several agencies to ask if emergency leave has in fact become a workaround to give employees severance. Six said that's not the case, citing the "good cause" proviso, as Paxton did.

The Department of Information Resources, for example, said it had "good cause" to pay 1,680 hours of emergency leave to five team members after they were let go from the agency.

"The employees you listed were granted this type of leave in conjunction with an agency reduction in force," agency spokesman Elliott Sprehe told *The News*.

Only one agency, the Texas Water Development Board, acknowledged that leaders use emergency leave to pay severance. The board has awarded large chunks of emergency leave almost exclusively to top level directors and managers. Notably, two directors were paid two months' leave before both were removed from the payroll on Dec. 31. Director William J. Harrison, who earned \$123,000 a year, and Andres "Andy" Saenz, a former communication director earning more than \$125,000 a year, both received emergency pay worth about \$21,000 each.

"It was a severance," said board spokeswoman Merry Klonower.

"Our executive administrator determined that those were positions that could be eliminated," she added. "We always try to treat people humanely, so we gave them a severance." Asked if that complied with state law, Klonower said: "I can't get into the details of that because I'm not a lawyer. I do know that it certainly is within the law." **Good cause?**



Shelia Latting (Photo: LinkedIn)

Shelia Latting says emergency leave was used to placate her as she was fired to make room for Miller's new hires at the Agriculture Department.

In November 2014, just before Miller took office, the former deputy chief financial officer says, she was promised a promotion to chief financial officer.

But Miller's office stopped responding to her calls after the new year, Latting said. Then, suddenly, she was told her position was being eliminated as part of a "reorganization" in her division. She received 480 hours of "emergency leave" just before she was officially terminated on April 12, 2015, records show. Latting said she was not asked to sign a resignation letter or other document detailing her continued pay. Instead, she received a letter saying that her position would be eliminated April 12, but that she would "no longer be required to report to the office after today." It was Jan. 12.

Page 1 of [Shelia-Latting-Leave-Document-Ag](#)

"They said to me, 'Hey, we're going to keep you on the books for three months. I said, 'OK.'" Latting told *The News*. "Mine was sort of a different situation with the severance because they had basically offered me the CFO position, and then they reneged on it."

Latting, who is black, [is now suing the agency](#) for wrongful termination and racial discrimination. Two white females were hired to fill her job and another newly created position in her department, she said.

Department spokeswoman Jessica Escobar declined to discuss Latting's termination, leave or lawsuit. She said the agency "makes all compensation decisions in accordance" with state law.

Latting, asked whether she would call the paid leave a severance, laughed and said, "I actually would call it 'stupidity.'"

Three other ag department staffers also received 152 to 480 hours of "emergency leave" between March and May 2015. At least two of them received nearly identical letters, which cited a division

"reorganization" and said they would no longer need to come to the office while they remained on the payroll.

All of the letters ended, "I realize this will be a difficult transition for you and your family."**'Shouldn't be done'**

While the law is fuzzy on emergency leave, former Lt. Gov. Bill Ratliff acknowledged, it was never his intention that emergency leave be used as a type of severance for state workers on their way out the door.

"As I understand it, in state government there is no such a thing as a severance," said Ratliff, who as a state senator wrote the 1999 bill revamping state employee vacation, leave and pay. "There are a lot of things in government that people do that are legal that still shouldn't be done."

Eliminating a job and paying someone afterward would not be an emergency, he said — adding that neither would wanting to replace someone or allowing an employee to do different work with the intent to return. "It seems to be that it's a kind of common-sense definition," Ratliff said. "It doesn't mean an inconvenience. It doesn't mean, 'I'd like to do something else for a while.'" Seth Hutchinson, organizing director of the Texas State Employee Union, said the state should use the money instead to provide pay raises for employees in the lower ranks. "The union definitely doesn't have an issue with severance pay, but it should be applied equally," Hutchinson said. **Also used for investigations**

Several agencies — including the Texas Alcoholic Beverage Commission and the Department of Insurance — said they routinely place employees on emergency leave if an employee is being investigated for wrongdoing or if an employment dispute is underway.

"I can tell you that some of the individuals listed on the spreadsheet were put on leave pending an investigation," said Chris Porter, spokesman for the commission. Some employees there have received ample paid leave because they were called to military service, he added. The Texas School for the Blind and Visually Impaired also recently used emergency leave to handle problem employees, who received between 80 and 220 hours of leave just before they were fired. "This emergency leave is not severance pay," spokeswoman Vicki Weston said. Weston said four of the school's employees were placed on paid leave "pending disciplinary investigations that led to their eventual termination or resignation." Because of the loose nature of how state officials can award paid leave, and a lack of documented justification, it's ultimately difficult to tell which employees were being rewarded for their work, such as Paxton's office has said, and which were in hot water. Staff writer Jon McClure contributed to this report.

Texas Senate votes to overhaul teacher pension system

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AUSTIN — Younger teachers would not be able to retire with full benefits until age 62 and all school employees in the Teacher Retirement System of Texas would have to make larger monthly contributions under legislation the Senate passed Wednesday.

The measure by Sen. Robert Duncan, R-Lubbock, won unanimous support from senators after Duncan agreed to changes sought by Democrats and teacher groups — including a phased-in increase in teacher contributions to the system. State funding for the pension plan also would increase, and school districts for the first time would kick in a share of the money.

“This will make the fund more robust and fundamentally sound,” said Duncan, who spearheaded negotiations that led to the compromise bill.

Duncan said the changes are needed to shore up the \$116 billion pension fund and provide a 3 percent cost-of-living adjustment for longtime retirees. About 102,000 beneficiaries who have been retired at least 15 years would get the bump — an average of \$42 a month — in September.

“It’s been a long time coming,” said Sen. Kirk Watson, D-Austin, noting that the last increase was several years ago.

Teachers will continue to contribute 6.4 percent of their pay into the system through next year and then see increases to 6.7 percent, 7.2 percent and 7.7 percent over the following three years. The state contribution would increase from 6.4 percent to 6.8 percent in 2015, and school districts — which now contribute nothing — would put in 1.5 percent of their total salaries.

The current minimum retirement age for full benefits is 60. That would increase to 62 under the Senate bill, but only for current employees with five or more years of experience. Only those with less than five years would have to work longer to qualify.

State rules now allow teachers and school employees to retire under the “Rule of 80,” in which age and years of service together equal 80. Teachers who retire before the minimum age have their benefits reduced.

Duncan said the changes should ensure the stability of the pension fund for decades and make it less reliant on investment returns than it has been in the past.

The measure now moves to the House.

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House, Senate leaders vow to crack down on misuse of leave as severance pay in Texas agencies, citing DMN reports



Sen. Jane Nelson, R-Flower Mound, said that the Senate Finance Committee, which she chairs, would tighten up state policies on the use of “emergency leave,” which several agencies appear to have used to grant severance pay. (Ralph Barrera/Austin American-Statesman)

AUSTIN — Leaders in the Senate and House vowed Tuesday to crack down on widespread misuse of so-called emergency leave following reports by *The Dallas Morning News* that detailed [dozens of cases in which employees continued to be paid months after they left state work](#), an apparent severance in some cases.

Sen. Jane Nelson of Flower Mound, the Republican chairwoman of the Senate Finance Committee, cited “news reports” when she strayed from the meeting agenda to raise concerns about the lack of oversight or restrictions governing how the leave can be used by top officials.

Emergency leave is supposed to give state employees a financial cushion in the event of a death in the family, health issues or another extraordinary event. But that isn’t stopping top state officials, including [Attorney General Ken Paxton](#) and Agriculture Commissioner Sid Miller, from doling out hundreds of thousands of dollars in leave because the law allows an agency chief to do so for “good cause.”

That proviso, called “vague” in Tuesday’s hearing, was cited by numerous agencies when *The News* asked why officials had given tens of thousands of dollars worth of emergency leave to employees as they left. Only one agency, the Texas Water Development Board, acknowledged that emergency leave was being used as a workaround to provide severance, a benefit that state law does not allow for.



Sen. Royce West

Dallas Democratic Sen. Royce West acknowledged that the law is murky and provides wide latitude for agency chiefs. But, he said, “the purpose of the provision is pretty clear. ... It’s not for severance pay.

“It’s a misuse, and I hope my colleagues will agree with me,” he added. “That’s not good cause. That’s not an emergency. That’s a severance. It’s a misuse of taxpayer dollars.”

Sen. Juan “Chuy” Hinojosa, a McAllen Democrat, responded to West, saying, “The problem is the agency head doesn’t have to agree with you.”

The influential committee appeared to agree with Nelson, who said: “We will be tightening it up.”

After the Senate hearing, House Speaker Joe Straus vowed that his chamber would also work to crack down on the problem.

“The House is concerned that some state agencies are abusing a personnel provision that should be reserved for very specific circumstances,” he said through his spokesman, Jason Embry. “I will work with colleagues to see how we should limit this practice and ensure that agencies use taxpayer dollars appropriately.”

Concerns about the use of emergency leave were first raised when *The News* reported that [Paxton had kept two top aides on the payroll](#) weeks after they had publicly resigned. A third top staffer, an attorney over the AG’s Child Support Division, [remained on the payroll for six months](#) after she left, the newspaper reported last week.

Paxton’s spokesman, Marc Rylander, again refused to provide details about those three ex-staffers but said the attorney general complied with state law.

“We believe that we have handled that properly, and moving forward, if the Legislature changes how that is to be handled, we would change how we use and distribute leave,” he said.

While emergency leave is routinely used for unexpected events in which workers need time off, agencies have also been known to grant leave while investigating an employee for wrongdoing or to mitigate their risk if an employment dispute has been filed.

Representatives from the Comptroller’s Office, the massive accounting agency that cuts the checks for Texas, and the Legislative Budget Board told senators they can either re-write the law, adding more rules and clarity, or they could introduce legislation that provides more oversight of agency heads who dole out leave.

When West asked whether state officials have been using emergency leave as severance, the budget board’s director, Urusula Parks, responded: “I cannot definitely answer that question.”

Philip Ashley, an associate deputy reporting to Comptroller Glenn Hegar, said the State Auditor’s Office is

charged by law to give directions to agencies about how they should use leave.

Officials at the auditor's office did not return a call seeking comment.

Sen. Paul Bettencourt, a Houston Republican, said it's clear the Legislature has to get involved to make sure emergency leave isn't being abused.

"I guess the summary of this is that good cause doesn't mean common sense," he said.

Staff writer Brittney Martin contributed to this report.