

Texas  
Department  
of Human Services

ID# 13393  
MJ

INTERIM  
COMMISSIONER  
Burton F. Raiford

August 21, 1991

RO-175

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The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711

Attention: Mary Keller

Re: Request for Opinion

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Opinion Committee

Dear General Morales:

The Department of Human Services has received a request from an employee that she be allowed to take sick leave in connection with the illness of a child for whom the employee is either a managing conservator or a possessory conservator as defined in the Texas Family Code. The policy regarding sick leave followed by this agency is authorized by Article V, Section 8(3), General Appropriations Act, 71st Legislature, Regular Session, 1989.

Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill. For purposes relating to regular sick leave, immediate family is defined as those individuals related by kinship, adoption, marriage or foster children who are so certified by the Department of Human Services who are living in the same household or if not in the same household are totally dependant upon the employee for personal care or services on a continuing bases. An employee who must be absent from duty because of illness shall notify his supervisor or cause him to be notified of that fact at the earliest practicable time.

This agency has construed the definition of "immediate family" to be a limitation which precludes a managing conservator or possessory conservator who did not otherwise meet the requirements of the Appropriations Act from taking sick leave for this purpose.

The individual employee has been advised that, since she does not meet the definition of an "immediate family" member, under the above construction, she may not take sick leave for the purpose of caring for a child for whom she is either the managing conservator or

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possessory conservator. She has, in turn, questioned whether the agency's interpretation of the Appropriations Act should not also include managing and/or possessory conservatorship as defined by the Texas Family Code as relationships intended to be covered by the legislature.

The Department of Human Services therefore respectfully requests the Attorney General's opinion on whether a managing conservatorship or possessory conservatorship is included within the definition of "immediate family" for sick leave purposes under Article V, Section 8(3), General Appropriations Act, 71st Legislature Regular Session, 1989.

Sincerely,

  
Burton F. Raiford  
Interim Commissioner

BFR:jbm