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Texas Department of  
Mental Health and Mental Retardation  
Karen F. Hale, M.S.S.A.  
Commissioner

FILE # ML-41037-99  
I.D. # 41037

Opinion Committee

OFFICE OF THE ATTORNEY GENERAL  
Executive Administration (001)

P O Box 12548  
Austin, TX 78711

September 30, 1999

RQ-0119-JC

OCT 01 1999



Central Office  
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Honorable John Cornyn  
Attorney General of Texas  
Price Daniel Sr. Building  
209 West 14th Street  
Austin, Texas

RECEIVED  
Liz Robinson  
FYI: General -10

Dear General Cornyn:

The recently amended Texas Labor Code, Section 501.044, clarifies that employees may not use sick leave and annual leave while simultaneously drawing weekly income benefits under worker's compensation.

*An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave. (Sec. 501.044(a))*

*An employee may elect to use all or any number of weeks of accrued annual leave before receiving income benefits. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted. (Sec. 501.044(b))*

Although the Labor Code now prohibits an employee's use of sick leave or annual leave while drawing income benefits, it does not address accumulated compensatory leave. The usual temporary income benefit equals 70 percent of the employee's average weekly wage, subject to limits set out in section 408.061 and 408.062 of the Labor Code. When workers' compensation benefits are added to the regular salary received while an employee is on compensatory leave, the employee receives 170 percent of his salary under the classification schedule set out in article IX of the General Appropriations Act. The payment of 170 percent of an employee's salary acts as a disincentive to return to work as quickly as possible following a work-related illness or injury.

Your advice and counsel are, therefore, respectfully requested with regard to the following questions:

1. Do state agencies have the authority to require an employee to exhaust accumulated compensatory leave before receiving weekly income benefits under the workers' compensation provisions of Texas law?

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2. If state agencies cannot require an employee to exhaust accumulated compensatory leave, can they prohibit the use of compensatory leave while drawing such benefits?

Sincerely,



Karen F. Hale  
Commissioner

c: Cathy B. Campbell, Director Legal Services, TDMHMR  
Margene Caffey, Director Human Resources, TDMHMR  
Ron Josselet, Director, Risk Manager, TDMHMR

KFHLS:kj.391



October 12, 1999

Ms. Gay Dodson, R.Ph. Executive Director/Secretary  
Texas State Board of Pharmacy  
333 Guadalupe, Tower 3, Ste. 600  
Austin, Texas 78701-3942

Re: Whether a pharmacy may dispense prescription drugs by machine at an off-site facility  
(Request No. 0121-JC)

Dear Ms. Dodson:

We have received your request for an attorney general opinion dated October 4, 1999, and have designated it as Request No. 0121-JC. Please refer to that number in future correspondence with us about this matter.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefs by November 12, 1999, if they would care to do so. If you are aware of other interested parties, please let us know as soon as possible.

Very truly yours,

Elizabeth Robinson  
Chair, Opinion Committee

ER/MRC/mc

Ref.: Request No. 0121-JC

cc: Mr. Steve Dillawn, Jackson Walker, L.L.P.  
Texas Association of Homes and Services for the Aging  
Texas Association of Homes for the Aging  
Texas Health Care Association  
Texas Nursing Home Association  
Texas Nurses Association  
Texas Pharmacy Association  
Texas Society of Health System Pharmacists  
Texas Wholesale Druggist Association