

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-47 (rev. 6), “BENEFIT REPLACEMENT PAY”
MAY 1, 2015
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TEXAS DEPARTMENT

OF

CRIMINAL JUSTICE

NUMBER: PD-47 (rev. 6)

DATE: May 1, 2015

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SUPERSEDES: PD-47 (rev. 5)
August 1, 2009

EXECUTIVE DIRECTIVE

SUBJECT: BENEFIT REPLACEMENT PAY

AUTHORITY: Tex. Gov't Code §§ 493.001, 493.006(b), 659.121-.127

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the executive director's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the TDCJ and **do not** create any legally enforceable interest or limit the executive director's, deputy executive director's, or division directors' authority to terminate an employee at will.

POLICY:

Eligible employees of the TDCJ shall receive benefit replacement pay in accordance with the provisions in this directive.

DEFINITIONS:

"Level," for purpose of this directive, is the equal disbursement of benefit replacement pay throughout the calendar year for eligible employees who earn at least the maximum wage base and who therefore shall receive the maximum benefit replacement pay.

"Maximum Wage Base" is annual *Federal Insurance Contributions Act* (FICA) wages of at least \$16,500.

“Working Retiree” is an active TDCJ employee who concurrently holds a retirement status through the Employees Retirement System of Texas (ERS).

DISCUSSION:

The 74th Legislature passed Senate Bill (SB) 102, which eliminated the provision for the state of Texas to pay a portion of state employees’ share of FICA taxes, commonly referred to as state-paid social security. To prevent most state employees who were currently employed by the state from receiving a decrease in net pay, SB 102 provided for benefit replacement pay. Beginning with wages paid January 1, 1996, state-paid social security ceased and certain employees became eligible for benefit replacement pay.

PROCEDURES:

I. Eligibility Criteria and Loss of Eligibility

An employee who was employed by a state agency or who was in an approved leave status as of August 31, 1995, and who was eligible to receive state-paid social security, is eligible for benefit replacement pay unless the employee loses eligibility. An employee who would otherwise be eligible for benefit replacement pay loses eligibility if the employee:

- A. Is a working retiree who retired from state employment before June 1, 2005, and did not return to state employment for 12 consecutive months or before September 30, 2005, whichever occurred first;
- B. Separated from state employment for any reason other than retirement between September 1, 1995 and August 31, 2005, and did not return to state employment for 12 consecutive months or before September 30, 2005, whichever occurred first;
- C. Is a working retiree who retired from state employment on or after June 1, 2005;
or
- D. Separated from state employment for any reason on or after September 1, 2005, and did not return to state employment for 30 consecutive days.

II. Benefit Replacement Pay Amount

Benefit replacement pay is considered wages for both the FICA and the ERS. The annual maximum benefit replacement pay for an eligible employee contributing to the ERS is \$1,026.86. The annual maximum benefit replacement pay for a working retiree who does not contribute to the ERS is \$965.25.

III. Leveling Options

- A. An eligible employee who does not earn the maximum wage base shall have the benefit replacement pay paid as earned over the calendar year, and does not have the option to level the benefit replacement pay.
- B. An eligible employee earning at least the maximum wage base may elect to level or not level the benefit replacement pay.

1. Election to Level

Leveling allows the benefit replacement pay to be equally disbursed over the entire calendar year and to be paid only on “regular” pay and not for overtime, lump sum, or special pays. The table below illustrates the amount of benefit replacement pay an eligible employee earning at least the maximum wage base shall receive each month if the leveling option is elected.

Eligible Employee	Maximum Annual Benefit Replacement Pay	Monthly Benefit Replacement Pay
Contributing to ERS	\$1,026.86	\$85.58 per month for 11 months; \$85.48 for 12th month
Working Retiree	\$965.25	\$80.44 per month for 11 months; \$80.41 for 12th month

An eligible employee who elects to level the benefit replacement pay and separates from employment before the end of the calendar year is ineligible to be paid the difference between the benefit replacement pay received and the amount that would have been received had leveling not been elected. This ineligibility exists whether the separation from employment is voluntary or involuntary.

2. Election Not To Level

If an eligible employee earning at least the maximum wage base chooses not to level the benefit replacement pay, the pay shall be paid on every

payroll with FICA wages until the maximum benefit replacement pay amount is reached.

3. Election Changes

Election changes shall be allowed only during election periods prior to the beginning of the calendar year as established by the Business and Finance Division. Benefit replacement pay election forms for the forthcoming calendar year shall be available through the human resources representative during the election period established by the Business and Finance Division. If an eligible employee does not change the leveling option during the election period, the leveling option shall remain the same as the previous calendar year.

4. Discontinuation of Leveling

An employee who elects to level the benefit replacement pay shall continue to have the benefit replacement pay leveled throughout a calendar year unless:

- a. The eligible employee is on leave without pay for a full pay period;
or
- b. The eligible employee's anticipated FICA wages for the calendar year drops below \$16,500.

If an eligible employee has the benefit replacement pay leveling discontinued during a calendar year, the remaining benefit replacement pay shall be recalculated and equalized for the remainder of the calendar year. In order to have the benefit replacement pay leveled for the forthcoming calendar year, the employee shall complete a benefit replacement pay election form during the election period.

Brad Livingston
Executive Director