

REPEAL OF SUBCHAPTER AA. EMPLOYEE TRAINING

Repeal 28 TAC §§1.2701-1.2703

1. INTRODUCTION. The Texas Department of Insurance proposes the repeal of 28 TAC Chapter 1, Subchapter AA, §§1.2701 – 1.2703, concerning Employee Training and the reenactment of the subject matter as new Subchapter DD, §§1.3101 – 1.3105, concerning Employee Training and Education. The proposed repeal and new sections will conform TDI's education and training programs with the State Employees Training Act, Government Code §656.041-§656.104, including amendments made by HB 3337, 84th Legislature, Regular Session.

2. EXPLANATION. Programs for the training and education of state administrators and employees materially aid effective state administration. A state agency's training and educational program may include preparing for technological and legal developments, increasing work capabilities, increasing the number of qualified employees, and increasing employee competence.

Subchapter AA is repealed and its subject matter is reenacted as Subchapter DD to facilitate a separate reorganization of Chapter 1. The proposed new sections allow more flexibility in TDI's education and education policy. The new sections add that TDI may require an employee to remain employed at TDI for a specific length of time or repay the reimbursement.

3. FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Patricia David, human resources director, has determined that for each year of the first five years the proposed repeal and new sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

4. PUBLIC BENEFIT AND COST NOTE. Patricia David has determined that for each year of the first five years the repeal and new sections are in effect, the public benefits anticipated as a result of the proposed repeal and new sections will be the ability to have rules in place for the new school semester and flexibility in the administration of education and training programs to increase TDI's ability to carry out its mission and duties.

5. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed repeal of Chapter 1, Subchapter AA, and new Subchapter DD will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses. Government Code §656.048 applies equally to all state agencies and requires that all state agencies adopt rules for education and training. The eligibility of small and microbusinesses to provide training or education to TDI employees has not changed.

As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

6. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

7. REQUEST FOR PUBLIC COMMENT.

Submit any written comments on the proposal no later than 5:00 p.m., Central time, on September 14, 2015. TDI requires two copies of your comments. Send one copy by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy by mail to the Texas Department of Insurance, Human Resources, Mail Code 112-HR, P.O. Box 149104, Austin, Texas 78714-9104; or by email to patricia.david@tdi.texas.gov.

8. STATUTORY AUTHORITY. TDI proposes the repeal of Chapter 1, Subchapter AA, under Government Code §656.048 and Insurance Code §36.001. Government Code §656.048 requires TDI to adopt rules relating to the eligibility of employees for training and education supported by the agency, and the obligations assumed by the employees

on receiving the training and education. Insurance Code §36.001 provides that the commissioner may adopt rules and regulations to execute the duties and functions of TDI only as authorized by statute.

9. CROSS-REFERENCE TO STATUTE. The repeal implements Government Code §656.048.

10. TEXT.

~~[SUBCHAPTER AA. EMPLOYEE TRAINING.]~~

~~[\S1.2701. General Provisions.]~~

~~[(a) Use of state funds. The Texas Department of Insurance may use state funds to provide training and education for its employees in accordance with provisions of the Government Code, §§656.044-656.049.]~~

~~[(1) Training to be duty related. The training or education shall be related to the duties or prospective duties of the employee.]~~

~~[(2) Attendance may be required. A department employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.]~~

~~[(3) Training program outline. The training and educational program of the department may include the four elements set out in subparagraphs (A)-(D) of this paragraph:]~~

~~[(A) preparing for technological and legal developments;]~~

~~[(B) increasing work capabilities;]~~

~~[(C) increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage; and]~~

~~[(D) increasing the competence of agency employees.]~~

~~[(4) Purposes for which public funds may be used. The department may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.]~~

~~[(5) Interagency coordination. The department may contract with another state, local, or federal department, agency, or institution, including a state-supported college or university, to train or educate its employees or may join in presenting a training or educational program.]~~

~~[(b) Approval subject to available funds. Approval to participate in a training program is not automatic and may be subject to the availability of funds within a division's budget.]~~

~~[\S1.2702. Employee Training Program.]~~

~~[(a) Components of program. The employee training program for the department consists of agency-sponsored training, seminars and conferences, Internet-based training, and tuition reimbursement, as set out and described in subsections (b)-(e) of this section.]~~

~~[(b) Agency-sponsored training. A program of in-house training for agency employees is provided. This in-house training program includes new employee orientation.]~~

~~[(1) Training on Policies Prohibiting Discrimination. All new employees must attend an orientation session within 30 days of their date of hire containing information on the department's policies and procedures including information on discrimination and sexual harassment. Employees must attend supplemental training on discrimination, including sexual harassment, every two years.]~~

~~[(2) Quarterly Training Calendar and Catalog. A quarterly training calendar lists course offerings. A training catalog contains course descriptions of all available courses. The employee's supervisor must approve all requests for in-house training.]~~

~~[(3) Payment of Course Fees. Some in-house training may require a division to pay for instructor fees and/or course materials, payment of which is coordinated through the Professional Development section of the department's Human Resources Division. If the course offers an optional examination for a fee, the employee taking the course will be responsible for payment of the examination fee. Any employee passing the examination may request reimbursement of the examination fee upon proof of payment of the fee and passing the examination. Some fees may be reimbursed at a percentage of base fee amounts as determined by the commissioner. Approval of payment is contingent upon availability of funds.]~~

~~[(4) Travel Expenses for Department-Sponsored Training. Travel expenses incurred by employees attending department-sponsored training will not be reimbursed unless the commissioner of insurance or his or her designee certifies the following:]~~

~~[(A) The department does not possess interactive television or videoconference facilities at the designated headquarters of the employee attending the seminar;]~~

~~[(B) The department cannot purchase or lease such facilities at a cost less than the total travel costs associated with the seminar; and]~~

~~[(C) The department does not have access to another agency's interactive television or videoconference facilities at the same location.]~~

~~[(5) Professional Development Section Assistance. The Professional Development Section of the department's Human Resources Division will assist the seminar coordinators in determining, on a case-by-case basis, the feasibility of using videoconferencing or interactive television for department-sponsored training. If it is determined that the travel expenses to attend agency sponsored training are justified, the requesting division's associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the employees' chain of command will prepare a written request to obtain certification from the commissioner of insurance prior to the training event. Copies of the certification must be submitted to the Professional Development Section of the department's Human Resources Division and to the department's Accounting Division.]~~

~~[(e) Seminars and conferences. The department may also pay for training, seminars or conferences unavailable in-house and related to a current or prospective duty assignment. Requests to attend an external training program, seminar or conference must be approved by the associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the~~

~~employee's chain of command. Training, seminars or conferences which are required to maintain a professional license will be considered a priority in allocating a division's training budget if the professional license is a requirement of the employee's job. Attendance at an approved training program, seminar, or conference will be considered part of the employee's normal work duties. An employee will not be required to use accrued leave to attend an approved training program, seminar, or conference.]~~

~~[(d) Tuition reimbursement. The department may reimburse full-time regular employees for tuition and required fees or may grant education leave in lieu of tuition reimbursement if the criteria set out in paragraphs (1)-(5) of this subsection are met.]~~

~~[(1) Eligibility. Eligibility requirements for tuition reimbursement must be satisfied as set out in subparagraphs (A)-(J) of this paragraph.]~~

~~[(A) An employee must have completed 12 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement or education leave. However, if the associate commissioner or highest level manager who reports directly to the commissioner, if not an associate commissioner in the employee's chain of command determines that an employee with less than 12 consecutive months of full-time employment needs a particular course and recommends the employee for eligibility, the 12-month requirement may be waived.]~~

~~[(B) An employee must have achieved an overall performance rating of at least 3.25 on the employee's most recent performance evaluation at the time of the request for approval to receive tuition reimbursement or education leave.]~~

~~[(C) An employee must not have been the subject of formal disciplinary action for at least six months prior to requesting approval to receive tuition~~

~~reimbursement or education leave. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.]~~

~~[(D) An employee must meet all admission requirements of the educational institution offering the course for which approval to receive tuition reimbursement or education leave is requested.]~~

~~[(E) The course work must be related to a current or prospective duty assignment within the agency. A prospective duty assignment may include a position within the agency to which the employee aspires. The associate commissioner or highest level manager who reports directly to the commissioner, if not an associate commissioner in the employee's chain of command will determine whether a course relates to a current or prospective duty assignment in the employee's division. The Human Resources Division will determine whether a course relates to a current or prospective duty assignment within the agency.]~~

~~[(F) At the time of the request for approval to receive tuition reimbursement or education leave, comparable training must not be scheduled to be offered in-house during the period of time covered by the tuition reimbursement or education leave request.]~~

~~[(G) The employee's participation must not adversely affect workload or performance.]~~

~~[(H) The employee must complete the course within the semester for which tuition reimbursement or education leave was requested.]~~

~~[(I) Incomplete courses are not eligible for tuition reimbursement or~~

~~education leave.]~~

~~[(J) The employee must receive a passing grade and/or receive college credit hours in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.]~~

~~[(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are set out in subparagraphs (A)-(F) of this paragraph.]~~

~~[(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is \$250 per semester, not to exceed \$500 per fiscal year. If an employee presents compelling reasons, the maximum amount for tuition reimbursement may be increased to \$500 per semester, not to exceed \$1,000 per fiscal year. Such increased amounts must be specifically approved by the associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the employee's chain of command and by the chief of staff.]~~

~~[(B) Employees may be reimbursed only for the cost of tuition and related fees at an educational institution.]~~

~~[(C) Employees will not be reimbursed for any part of tuition covered by scholarships, grants or other awarded funds.]~~

~~[(D) Employees will not be reimbursed for items that are not part of tuition, such as textbooks, workbooks, lab supplies.]~~

~~[(E) Employees will not be reimbursed for auditing a course.]~~

~~[(F) Employees will not be reimbursed for any federal income taxes incurred because of education assistance paid by the department.]~~

~~[(3) Education leave in lieu of tuition reimbursement. Criteria for taking education leave in lieu of tuition reimbursement are set out in subparagraphs (A)-(F) of this paragraph.]~~

~~[(A) Education leave may be taken only for approved courses which are offered only during work hours.]~~

~~[(B) Before requesting education leave, employees must fully consider and explore education options that would not involve education leave. For example, employees must register for classes scheduled before or after work, or during the lunch hour when courses are available at those times. Employees may also request a flex-time or compressed work week schedule that would allow for class attendance without the use of education leave. Such a work schedule must not disrupt or adversely affect performance by the employee or the employee's division, section, program or activity.]~~

~~[(C) An employee approved for education leave in lieu of tuition reimbursement may be granted up to six hours per week of education leave in lieu of tuition reimbursement.]~~

~~[(D) Education leave may be taken for the sole purpose of attending an approved course during work hours. An employee may not take education leave if the employee does not actually attend the class for which education leave has been approved. Education leave may not be taken during the week of spring break. Education leave may not be taken to study for a course.]~~

~~[(E) Education leave will be treated as emergency leave on the employee's monthly attendance record with a notation that the emergency leave is for the purpose of attending a course approved for education leave.]~~

~~[(F) An employee who has been approved for education leave in lieu of tuition reimbursement will receive, on a provisional basis, the approved amount of education leave. If the employee satisfactorily completes the course, the approved leave will remain designated as education leave. However, if the employee fails to satisfactorily complete the course for which education leave was granted, or if the employee separates from employment with the department before submitting the final grade report for any courses for which education leave was granted, the leave will be changed to annual leave, compensatory time leave or overtime leave, and the employee's leave balances will be adjusted accordingly. If the employee's leave balances are exhausted, the remaining education leave will be changed to leave without pay, and the employee's pay will be adjusted accordingly.]~~

~~[(4) Procedure. Specific procedural steps required to complete the tuition reimbursement process are set out in subparagraphs (A)-(G) of this paragraph.]~~

~~[(A) An employee must receive written approval to receive tuition reimbursement or education leave prior to enrolling in the course or courses for which tuition reimbursement or education leave is requested. Approval of tuition reimbursement or education leave will be granted on a semester-by-semester basis.]~~

~~[(B) Tuition reimbursement or education leave must be approved by the associate commissioner or highest level manager who reports directly to the commissioner, if not an associate commissioner, in the employee's chain of command. The Human Resources Division also will review all requests for tuition reimbursement or education leave to ensure compliance with this policy. In addition, education leave must be approved by the chief of staff. The chief of staff has been authorized by the~~

~~commissioner to determine whether good cause exists to grant education leave in lieu of tuition reimbursement.]~~

~~[(C) To receive reimbursement for tuition, within two weeks after receipt of the final grade in a course for which reimbursement has been approved, the employee must submit a purchase request, a copy of the final grade report, and an itemized tuition receipt to the associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the employee's chain of command. Upon approval of the purchase request, the employee must send a copy of the approved purchase request to the Human Resources Division. The department will not reimburse tuition if an employee separates from employment with the department before submitting the final grade report for any courses for which tuition reimbursement was granted.]~~

~~[(D) If an employee has been approved for education leave, within two weeks after receipt of the final grade in a course for which education leave has been approved, the employee must submit a copy of the final grade report to the associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the employee's chain of command.]~~

~~[(E) An employee must immediately notify the associate commissioner--or highest level manager who reports directly to the commissioner, if not an associate commissioner--in the employee's chain of command if the employee ceases to be enrolled in a class for which reimbursement or education leave has been requested.]~~

~~[(F) A manager may require that an employee receiving tuition reimbursement or education leave make regular reports regarding the employee's~~

~~progress in the course for which reimbursement or leave has been authorized.]~~

~~[(G) Copies of documentation regarding tuition reimbursement and education leave will be forwarded to the Human Resources Division. The Human Resources Division will monitor compliance with and utilization of this policy.]~~

~~[(5) Use of equipment. Employees may not use department equipment, such as computers, calculators, or typewriters to complete course work for which tuition reimbursement or education leave has been granted.]~~

~~[(e) Internet-based Training. The department shall use Internet-based training for state-mandated human resources training and other training programs if Internet-based training is available and appropriate. The department may establish procedures for employees to use Internet-based training.]~~

~~[(f) Employee obligations upon completion of training. Upon completion of a training program, an employee's manager may require that the employee assume certain additional obligations, including, but not limited to, the obligations set out in paragraphs (1)-(4) of this subsection.]~~

~~[(1) An employee may be required to discuss information obtained at the training with other department employees.]~~

~~[(2) An employee may be required to share materials obtained from training with other department employees, to the extent such sharing does not violate copyright law.]~~

~~[(3) An employee may be required to assume additional job duties for which the training prepared the employee.]~~

~~[(4) An employee may be required to conduct training for other department employees concerning the information or skills taught at the training program.]~~

~~[\S1.2703. No Effect on At-will Status. Approval to participate in a training program, including agency sponsored training, seminars or conferences, Internet-based training, or the tuition reimbursement program shall not in any way affect an employee's at-will status.]~~

~~[(1) No guarantee or entitlement. The approval of tuition reimbursement or education leave for one semester is not a guarantee or indication that tuition reimbursement or education leave will be granted for subsequent semesters.]~~

~~[(2) Employment status unaffected. Approval to participate in a training program, including agency sponsored training, seminars or conferences, Internet-based training, or the tuition reimbursement program, shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.]~~

~~[(3) Effect of agreement under Government Code §656.103. An agreement in accordance with Government Code §656.103 shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.]~~

SUBCHAPTER DD. EMPLOYEE TRAINING AND EDUCATION.

New Sections §§1.3101-1.3105

STATUTORY AUTHORITY. TDI proposes new Chapter 1, Subchapter DD under Government Code §656.048 and Insurance Code §36.001. Government Code

§656.048 requires TDI to adopt rules relating to the eligibility of employees for training and education supported by the agency, and the obligations assumed by the employees on receiving the training and education. Insurance Code §36.001 provides that the commissioner may adopt rules and regulations to execute the duties and functions of TDI only as authorized by statute.

CROSS-REFERENCE TO STATUTE. Chapter 1, Subchapter DD implements Government Code §656.048.

SUBCHAPTER DD. EMPLOYEE TRAINING AND EDUCATION.

§1.3101. General Provisions.

(a) TDI may use state funds to provide education and training for its employees.

(b) The education and training program benefits the TDI and participating

employees by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees; and

(4) increasing the competence of employees.

(c) Approval to participate in an education or training program is not automatic and may be subject to the availability of funds.

§1.3102. Eligibility requirements.

(a) The education or training must be related to the employee's current position or prospective job duties.

(b) In order for an employee to be eligible for tuition reimbursement or education leave, an employee may be required to meet certain conditions, including, but not limited to, an employment period, performance ratings, and disciplinary actions.

§1.3103. Participation.

(a) Participation in an education or training program may include:

(1) mandatory TDI-sponsored training required for all employees;

(2) education and training relating to technical or professional certifications and licenses;

(3) education and training relating to the promotion of employee development;

(4) employee-funded external education;

(5) TDI-funded external education; and

(6) other TDI-sponsored education and training.

(b) Employees may be required to complete an education or training program related to the employee's duties or prospective duties as a condition of employment.

(c) Permission to participate in any education and training program may be withdrawn if TDI determines that participation would negatively impact the employee's job duties or performance.

§1.3104. Obligations. On completion of an education or training program, an

employee's manager may require that the employee assume certain additional obligations, including, but not limited to:

(1) discussing and sharing information obtained at the training with other employees;

(2) assuming the additional job duties that the training prepared the employee for;

(3) conducting training for other employees concerning the information or skills taught at the training program; and

(4) remaining employed at TDI for a specific length of time or repay the reimbursement.

§1.3105. No Effect on At-Will Status. Approval to participate in any portion of the education and training program will not affect an employee's at-will status or constitute a guarantee or indication of continued employment, nor will it constitute a guarantee or indication of future employment in a current or prospective position.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on July 29, 2015.



Sara Waitt, General Counsel
Texas Department of Insurance