

**The Bill Blackwood
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**“BURNING” EXCESS SICK DAYS AT RETIREMENT:
EMPLOYEE BENEFIT OR POLICY VIOLATION?**

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**An Administrative Research Paper
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ABSTRACT

Agency sick leave policies are often problematic. Employees, encouraged to come to work bank sick leave for years then, in the twilight of their careers, 'burn' sick leave in order to accrue the maximum use of this benefit, potentially leaving the organization with a manpower shortage. The purpose of this project is to provide the impetus to create a balanced sick leave policy that recognizes the needs of both employer and employee. Using a survey and available literature to define the problem and search for possible solutions, this paper can be used to as a starting point to examine the effects sick leave policies and possible solutions to create a more effective policy.

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INTRODUCTION

Sick leave is an important component of any employee's benefit package. As such, some employers allow their personnel to accrue sick leave with no limitations. However, when an employee leaves, the organization may pay the employee for some, all, or none of his remaining accumulated sick time. Organizations that do not "buy back" all of an employee's excess sick leave risk having that employee use their remaining sick time at the end of their careers in an attempt to maximize the benefit "owed" that employee for years of selfless service. This holds true in the law enforcement career field as well as private industry.

Unfortunately, this type of behavior creates problems for an organization. The employee cannot be replaced until they have retired, resulting in a temporary personnel shortage. And, depending on the employee's position within the organization, the administration or command structure of the agency can be paralyzed as the retiring official is considered to be occupying a position even if he is not at work.

This is a problem that plagues the San Angelo Police Department (SAPD). Already finding it difficult to recruit and retain personnel, the department faces the possibility that an inordinate number of officers will retire within the next few years. SAPD is governed by Section 143 of the Texas Local Government Code, commonly known as civil service. Texas civil service law allows officers unlimited accrual of sick time at the rate of ten hours per month. However, when an officer retires, the city only reimburses the employee for 720 hours of sick leave, with the officer losing any time in excess of ninety days. It is common practice, which SAPD allows, for retiring officers to "burn" sick leave in excess of 720 hours, despite an obvious conflict with written policy.

The purpose of this project is to provide the impetus for the creation of a new sick leave “buy back” policy. The new policy will need to create an incentive for officers to not use sick leave at the end of their career. Ideally, both city administrators and police personnel will be involved in the search for an acceptable solution. The intent of this research is to determine what options exist that will curb officers from using accrued sick leave during and at the end of their careers while fairly compensating them for accruing sick leave throughout their tenure.

The intent of this research is to present a balanced view of this issue. The city government code and the San Angelo Police Department’s sick day policy will be considered. Further, other resources will be taken into account. However, the main focus of the research will be on survey information received from other law enforcement agencies and privately owned businesses.

The anticipated findings are a number of options that can help resolve this problem. These concepts may come from government agencies or private businesses. Quite likely a combination of the above will provide reasonable ideas.

Notwithstanding the ethical issues involved, there are dangers in pursuing this issue. Institutional thought--the acceptance of *status quo*--is being challenged and this is rarely popular. Yet as Maxwell (2003) has asserted, “unpopular thinking asks questions and seeks options” (p. 202).

Further, a compromise will be nearly impossible to achieve should either party prove intransigent. The city government is in a position to impose a policy that may be viewed as unreasonable; leaving the officers to question why “well enough” was not left alone. In turn, officers will be less likely to sacrifice for the “general good” at a later date.

Yet, because this issue places the department in a potentially devastating personnel situation, it needs to be examined.

Whether or not San Angelo forges a compromise, the law enforcement community will benefit from this research by offering a number of ideas to resolve this problem. At the very least, the information contained in this paper will offer a starting point for others to continue future research.

REVIEW OF LITERATURE

Sick leave is a benefit that organizations should offer their employees. If an employer does not offer sick leave, it “would accelerate health problems and the spread of illness, thereby lowering [employee] productivity and morale” (Smith, 2001). However, according to Orrick (2004), sick leave was originally intended as a privilege but over the years has come to be viewed by employees as an entitlement. The result is that some employees feel justified in maximizing this ‘entitlement’ any way they can, including using sick leave even when they are not ill (Knight, 1973). This type of behavior is stressing to an organization, particularly when the employee is preparing for retirement and begins to take more and more sick time in an attempt to use up what leave time he may have remaining.

To be sure, employee absenteeism is a problem that affects organizations of every type (Goodman, Atkin, and Associates, 1984). And according to Menchen (1996) the problem is getting worse as more and more employees take “unscheduled absences to deal with family issues, stress and personal needs” (p. 17). In fact, one study indicated that “78% of all sick time is being used by employees who aren’t sick at all” (Gillette, 1998, p. 10).

Estimates of the cost of absenteeism vary. In terms of man-hours, one source estimates that in the public sector 9.2 work days per employee are lost annually to sick leave while 7.5 days per employee are annually lost to illness in the private sector (Hunt, 2000). And the dollar cost of absenteeism can be crippling. Cost estimates for unplanned absenteeism have recently risen from \$602 (Smith, Part I, 2001) to \$789 (Reed, 2003) annually per employee. Orrick (2004) contends that unscheduled absenteeism costs organizations “an additional 150 percent over the budgeted amount to cover the vacancies with overtime pay” (p. 39).

From January thru June 2004, the San Angelo Police Department used 78.25 hours of overtime to cover officers who called in sick. At approximately \$19.00 per hour, the cost to pay the overtime as well as the ill officer’s regular salary would equate to a cost of over \$7400.00 for the entire year.

More than just dollar costs are involved. Unscheduled absenteeism impacts the effectiveness of an organization. Schedules are disrupted as projects are postponed just to cover the organization’s daily needs. Training is cancelled when employees cannot attend because they must fill-in for missing co-workers (Gwaltney, 1994). Productivity and quality slip as both supervisors and workers attempt to maintain the same level of efficiency with fewer people. Interpersonal problems arise when co-workers have to assume an abuser’s job responsibilities, in addition to their own work (Orrick, 2004). Gwaltney asserts that in law enforcement agencies, abuse of leave time can even lead to the loss of life (1994). No wonder unscheduled absenteeism is considered “one of the most insidious drains of productivity of any of the forms of employee withdrawal” (Hinrichs, 1980, p.1).

To combat the problem of employee absenteeism, organizations have adopted various strategies. These strategies are as diverse as the organizations themselves and represent a wide array of potential solutions, both positive and negative.

Taking a wide view of organizations as a whole, authoritarian management styles and poor working conditions may contribute to absenteeism (Combating Absenteeism). Echoing this thought, Hirichs (1980) recommends that supervisory style, pay, and work hours all be examined to determine their affects on absenteeism. Cronin (2000) even recommends that organizations adopt a no-fault attendance policy in lieu of traditional sick time because it does away with entitlement mentality.

Taking a more narrow focus, others suggest concentrating on positive incentives such as bonuses that would award either money (Gwaltney, 1994) or time (Hinrichs, 1980) to an employee for outstanding attendance. Smith (Part II, 2001) offers a number of potential solutions, including employee sick leave sharing, the conversion of sick leave to vacation time, the conversion of sick leave to insurance, and the conversion of sick leave to medical expenses. Though overwhelming evidence suggests practices that positively influence absenteeism are preferred, Knight (1973) wrote of one company that allowed no paid time off for illnesses. McNaught and Schofield (1998) suggest that employee activities be restricted while they are home on sick leave.

Despite the variety of strategies and ideas, one tactic that is nearly always suggested is the development of an effective attendance policy. Such a policy would allow supervisors to get involved with employees who are frequently absent, hoping to uncover a problem that can be eliminated, or at least made better. The idea is that the earlier a problem is identified, the more quickly an employee can return to work

("Combating absenteeism," n.d.). And Perry (1997) points out that a poorly designed attendance policy can result in a costly lawsuit (p. 89).

Among the broad factors to consider when developing an attendance policy, according to Goodman and Atkin (1984), are:

1. Clarity. The policy must be easily understood by everyone in the organization.
2. Consistency. Is the policy enforced equally regarding every employee?
3. Discretion. Management discretion in excusing or not excusing an absence must be minimized.
4. Communication. The attendance policy must not only be published but it must be communicated directly to all employees. In this communication process, management should make it clear that it intends to enforce the attendance policy.

Organizations should implement a strategy of progressive discipline. This is the idea that each succeeding step in the disciplinary process is more severe than the last. An oral warning would be followed by a written warning. Further, a suspension would occur before an employee is terminated. Progressive discipline works to the advantage of an organization attempting to discipline a problem employee.

When developing an effective attendance policy, there are specific violations and issues which should be addressed. A specific number of attendance violations should be stated in the policy. The violations—which should include the number of absences as well as tardiness and the number of times an employee leaves early—should be recorded and tracked. Advance notice of an absence should be required, when possible, and the failure to properly report an absence needs be recorded. If employees

are required to submit medical certification of an illness, any failure to comply should be recorded (Smith, 2001, Part I).

The San Angelo Police Department is an organization that struggles to deal with absenteeism, especially as an officer's career winds down. This struggle is the result of the civil service law, the failure of the municipality to compensate officers for accruing sick leave during their careers, and an ineffective attendance policy.

The City of San Angelo has adopted Section 143 of the Texas Local Government Code, commonly known as civil service law. Section 143.045(a) guarantees that civil service employees shall accumulate 1 ¼ sick leave days for each full month employed. Section 143.045(b) states that sick leave may be accumulated without limit.

However, when an officer leaves the department, Section 143.045(c) only requires the municipality to pay the officer for ninety working days (720 hours) of accumulated sick leave. As of August 2004, 33 of 136 civil service employees have accumulated at least 720 hours of sick leave. As the situation exists now, beyond personal integrity, there is little reason for any of these officers to continue to accrue sick leave.

So there is a tendency for San Angelo police officers to use sick days throughout their career, even when there is no legitimate illness, because they will not be compensated for accruing sick time beyond 720 hours.

This practice becomes acute when an officer nears retirement. Officers who have accrued over 720 sick leave hours generally will use the accrued excess sick leave, sometimes expending the entire amount! In effect, retiring officers participate in an unofficial terminal leave program.

And because these officers are being carried as sick, they are still considered employees of the department and cannot be replaced until they officially retire from the agency. In turn, this creates a manpower shortage that can affect the entire organization.

As of September 2004, the San Angelo Police Department has 158 job positions for sworn personnel and currently has fourteen openings. At the same time twenty-six officers are eligible to retire. Of the officers eligible to retire, half have accrued over 720 sick leave hours. It is apparent that the department currently faces a potentially devastating manpower crisis.

An ineffective sick leave policy does nothing to curb the practice of abusing sick leave. The San Angelo Police Department's sick leave policy simply states that sick days "will be used for illness or employees or their immediate families. Employees will not be allowed to overdraw on sick days and will be docked for all time taken in excess of accumulated time. (San Angelo Police Department General Orders Manual, Chapter 2, Section 2.86(E)."

The City of San Angelo's sick leave policy is just as ineffective. A handbook given to new city employees states that "sick leave is granted to all city employees and it is for temporary inability of an employee to perform his normal duty and assignment due to personal illness or illness in the immediate family. . . . In the event of sick leave abuse, the supervisor may require a doctor's statement. (City of San Angelo Employee Handbook, p. 1)."

Though more detailed, the actual city policy manual adds very little to what is in the handbook. Sick leave may still be used for "an inability . . . to perform his normal duties (City of San Angelo Policy Manual, 1991, Section 100, Part I(A))." Though both

the department and city sick leave policies are vaguely written, it is clear that any employee who uses sick leave at any point during their career when they are able to perform their normal duties, is in violation of the policy.

However, the city does attempt to compensate employees who accumulate sick leave above ninety days. The city policy states that “employees who have over ninety (90) days of sick leave may redeem up to ten (10) days of sick leave per year, minus any sick days used during the year, so long as said employee maintains (90) days of sick leave at time of redemption.” However, the following stipulation is attached, “Redemption shall be paid at the rate of 50% of the employee’s daily wage rate. (City of San Angelo Policy Manual, 1991, Section 100, Part V(A), 1 and 2).”

As described above, employees no longer view sick leave as a privilege but as an entitlement. Employees are rarely interested in a buy-back provision that will only compensate them for half of what they feel they are owed. And so, to be compensated entirely for what they believe they are owed, many San Angelo police officers do not hesitate to use sick leave throughout their career, even up to the day they retire.

METHODOLOGY

The intent of this research is to determine what options exist that will curb officers from using accrued sick leave during and at the end of their careers while fairly compensating them for accruing sick leave throughout their tenure. This author believed that a reasonable solution exists and decided to conduct a written survey of other organizations in an attempt to find an answer.

Dr. Sudhir Chawla, Professor of Marketing at Angelo State University, made a number of suggestions regarding the survey. Based on these suggestions, it was

determined that the survey would be sent only to municipal law enforcement agencies serving populations between 75,000 and 125,000. Sixty percent of the surveys would be sent to Texas police departments while forty percent would be sent out-of-state. Both the in-state and out-of-state surveys were constructed in a similar manner.

A total of thirty surveys were sent out, eighteen to police departments in Texas and twelve to out-of-state departments. Sixteen Texas police departments responded, an 89% response rate. Nine out-of-state departments responded, a 75% response rate.

FINDINGS

The average number of sworn personnel in Texas agencies is 188 and the average size of the municipality they serve is 110,272. The average number of sworn personnel in out-of-state agencies was 195 and the average size of their jurisdiction was 109,111.

First, this author was interested in learning whether other Texas civil service agencies experienced a problem similar to that of San Angelo regarding officers abusing sick leave. Twelve of the sixteen Texas agencies that replied indicated that they have adopted civil service laws and eleven of those bought back the minimum 720 accrued sick hours (Carrolton buys back 960 accrued sick hours). On a scale of 1 to 5, with 1 being very unlikely and 5 being very likely, the following questions were asked:

1. Given your agency's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **during** his/her tenure at the agency?

An administrator at the San Angelo Police Department, who was unaware of the research being conducted, rated San Angelo as a 5. Overall, the average response was 3.08.

2. Given your agency's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **at the very end** of his/her tenure at the agency?

Once more San Angelo responded with a 5. The average of the other Texas civil service agencies was 3.67. (Pasadena recently adopted civil service and officers currently near retirement will not be limited in the number of sick leave hours their municipality will buy back. If Pasadena's response were not included in Appendix 1, the average would be 3.81.)

There is a clear indication that in agencies that have adopted the Texas Local Government Code, officers are neither likely nor unlikely to abuse sick leave during the majority of their career. However, they are likely to abuse sick leave at the end of their career.

As a comparison, the non-civil service Texas agencies were also tallied. There were only four respondents but the average answer to question #1 was 2.50. The average response to question #2 was also 2.50. Both answers indicate that non-civil service departments have fewer problems with officer abusing sick leave, especially at the end of their careers. See Appendix 2.

The same two questions were asked of out-of-state agencies. None of these agencies have adopted any state law similar to the Texas Local Government Code. The average response to question #1 was 2.67 while the average response to question #2 was 3.11. See Appendix 3.

One factor emerges when closely examining all of the data. Ten of the non-civil services agencies—both in-state and out-of-state—only buy back a portion of accrued sick leave. And two agencies do not buy back any accrued sick leave! Only one agency buys back 100% of accrued sick leave. It should be determined why these departments do not have as much sick leave abuse as Texas civil service agencies.

The answer becomes somewhat clear when you examine the answers to one other question contained in the surveys. The respondents were asked what kind of compensation officers received for unused accrued sick leave?

--Bloomington, Minnesota: Officers accruing less than 600 hours of sick leave receive 100% reimbursement at full pay. For officers with more than 600 hours of accrued sick leave, the city places the monetary equivalent in a medical expense account.

--Brockton, Massachusetts: The city buys back unused sick leave at full pay annually.

--Santa Clara, California: The city purchases 75% of an officer's accrued sick leave balance at full pay.

--Pasadena, Texas: Until 1992 officers were paid 100% of their unused accrued sick leave. Since then Pasadena, Texas, has adopted the Texas Local Government Code.

--Odessa, Texas: Officers are paid 100% of their unused accrued sick leave.

In each of the above agencies, officers have some incentive to accrue as much sick leave as possible because it directly affects the benefit an officer receives upon retirement. Interestingly, among these departments, the average to question #1 (sick leave abuse during a career) was 2.40—slightly better than all non-civil service agencies combined. However, the average response to question #2 (sick leave abuse at the end of a career) was 2.00—a dramatic improvement over the combined non-civil service agencies!

Finally, two last items need to be examined. Of the departments surveyed, all but one (Bloomington, Minnesota) had a sick leave policy of some kind. Of the fifteen departments with sick leave policies, just two (Lansing, Michigan and Tallahassee, Florida) addressed sick leave abuse at the end of a career. None of the Texas civil service agencies addressed sick leave abuse at the end of a career, despite an admission that employees are likely to abuse sick leave at the end of their tenure. It appears that for the most part, these municipalities and agencies do not wish to address sick leave problems despite the potential costs—not all of which are monetary.

CONCLUSIONS

The San Angelo Police Department, which already has openings for fourteen officers, faces the fact that twenty-six current officers can retire at any time. And, given the past and current practice of the San Angelo Police Department, any retiring officer will be allowed to use any sick leave accrued during the officer's career. Yet, while a retiring officer is "burning" this accrued sick leave, a replacement cannot be hired because the retiring officer is considered to be a fulltime employee. This information reflects a very dangerous situation in terms of a manpower shortage—the department may have to function with just three-quarters of its allotted manpower!

This research paper is not devoted to recruiting and hiring new officers. However, if an effective solution can be found to prevent retiring officers from "burning" excess sick leave, it would help alleviate some of this potential problem by finding an incentive for officers to work right up to the very end of their career and not to occupy positions that could be filled by new officers.

This author believed that some organizations were successfully addressing the problem of sick leave abuse. The challenge of this research was to review existing

literature to determine the problems created by sick leave abuse and the potential solutions to the problem. However, the bulk of the research would rest with a survey of municipal law enforcement agencies to determine which agencies had found potential solutions to this problem and to determine what those solutions were.

From the literature reviewed, it was apparent that sick leave abuse occurred in both private and public employment sectors. Also, the cost of sick leave abuse was tremendous—not only in monetary terms but also in terms of organizational morale and efficiency.

Though the survey did not measure monetary costs nor organizational moral or efficiency, it did reveal useful information about law enforcement agencies, in particular Texas civil service departments.

First and foremost, officers do view sick leave benefits as an entitlement and when allowed to they will take action to get the entitlement. In Texas civil service agencies, this is generally accomplished at the end of an officer's career when the officer abuses sick leave to use all accrued, excess sick time.

Second, though most agencies have a sick leave policy, very few address absenteeism at the end of a career nor do anything to enforce the policy at the end of an officer's tenure. In effect, there is a difference between written policy and common practice and courts have consistently ruled that when there is a difference between written policy and actual practice, actual practice will take precedence.

Finally, those agencies which had employees least likely to abuse sick leave at the end of a career offered employees a positive incentive to accrue sick leave during their tenure. One agency pays employees for all of their accrued sick leave upon retirement. Another department pays 75% of accrued sick leave, providing an incentive

for officers to save more so that they could be paid more. Yet another agency pays officers annually for any excess sick time they accrue during the year. And one organization converts unused sick leave into a medical expense account upon retirement.

As suspected, the surveys support that officers who have an incentive to save sick leave will generally not abuse sick time during their career, instead opting for a pay-off at the end of their tenures. And options exist to create such incentives in law enforcement agencies.

It is apparent that for such incentives to be enacted, both the municipality and the officers must come to an understanding. The municipality must realize that if it only compensates officers for the minimal amount of sick leave required by law, the municipality is contributing to a minimalist culture within the organization of city government and the municipality should not expect employees to exceed a standard it is not willing to exceed itself.

Conversely, employees must understand that if the municipality is willing to exceed minimal standards required by law, then the employees should be prepared and willing to be held to a higher standard as well. For example, employees should be prepared to abide by an organization's sick leave policy.

The author regrets that the surveys were so limited in number. Had more surveys been sent out and returned, the results would have been strengthened. Further, more options would have likely been received.

Nonetheless, the results can be used by an organization—particularly a law enforcement agency—to begin examining the effects a sick leave policy has on its employees and how the policy may be affecting the agency in the long term. Officers

expect to be fully compensated for the benefits they believed they are promised.

Agencies expect officers to be at work, unless they are legitimately ill. In locations where employee absenteeism is high, if the agency and the employees work together, solutions can be found that will benefit the agency, the employees, and most importantly, the community being served.

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Appendix 1

Texas Civil Service Police Departments

Agency	Population	Officers	Response #1	Response #2
Abilene	185,000	180	2	2
Marathon	954,000	153	3	3
Orderville	104,950	267	2	3
Killeen	100,000	176	3	2
McAllen	139,000	238	2	3
Merriam	107,300	152	2.50	2.50
Pasadena	145,000	260	2	2
San Angelo	90,000	131	5	5
Tyler	90,000	182	4	5
Unidentified	130,000	207	2	3
Waco	114,934	220	3	4
Wichita Falls	104,197	190	4	4
Average	116,451	201	3.08	3.67

Responses #1 and #2: On a scale of 1 to 5, with

1 being very unlikely and 5 being very likely, the following questions were asked:

#1: Given your department's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **during** his/her tenure at the agency?

#2: Given your agency's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **at the very end** of his/her tenure at the agency?

Appendix 2

Texas Non-Civil Service Police Departments

Responses #1 and #2:

On a scale of 1 to 5, with 1 being very unlikely and 5 being very likely, the following questions were asked:

#1: Given your department's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **during** his/her tenure at the agency?

#2: Given your agency's sick leave "buy back" policy, is an officer more likely to consistently use sick leave in violation of department policy **at the very end** of his/her tenure at the agency?

Appendix 3

Non-Texas Police Departments

Responses #1 and #2:

On a scale of 1 to 5, with 1 being very unlikely and 5 being very likely, the following questions

Agency	Population	Officers	Response #1	Response #2
Bloomington, MN	85,000	114	1	1
Brockton, MA	94,000	185	4	5
Eugene, OR	140,000	184	3	4
Lansing, MI	119,000	257	3	4
Norman, OK	100,000	131	3	3
Pueblo, CO	103,000	189	1	4
Santa Clara, CA	105,000	150	3	1
Tallahassee, FL	154,000	350	3	3
Youngstown, OH	82,000	195	3	3
Average	109,111	195	2.67	3.11

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sick leave “buy back” policy, is an officer more likely to consistently use sick leave in violation of department policy **during** his/her tenure at the agency?

#2: Given your agency’s sick leave “buy back” policy, is an officer more likely to consistently use sick leave in violation of department policy **at the very end** of his/her tenure at the agency?