

Regulation 4261.1: Personal Illness/Injury Leave

Status: DRAFT

Original Adopted Date: 10/06/2020 | Last Revised Date: 09/12/2023

Classified employees employed five days a week are entitled to 12 ~~days~~ **days** leave of absence with full pay for personal illness or injury (sick leave) per fiscal year. Employees who work less than a full fiscal year or fewer than five days a week (part-time employees) shall be granted sick leave in proportion to the time they work. However, part-time employees who are entitled to less than 24 hours of paid sick leave per fiscal year due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246, if they are eligible. (Education Code 45191; Labor Code 245-249)

Use of Sick Leave

A classified employee may use sick leave for absences ~~due~~ **as authorized by law and/or collective bargaining agreement, including, but not limited** to:

1. Accident or illness, whether or not the absence arises out of or in the course of employment, or by quarantine which results from contact in the course of employment with other persons having a contagious disease (Education Code 45199)
2. Pregnancy, miscarriage, childbirth, and related recovery, **as well as reproductive loss** (Education Code 45193); **Government Code 12945.6)**
3. Personal necessity (Education Code 45207)
4. Medical and dental appointments, in increments of not less than one hour
5. Industrial accident or illness when leave granted specifically for that purpose has been exhausted (Education Code 45192)
6. Need of an employee to bond with a child within one year of the child's birth, adoption, or foster care placement (parental leave) (Education Code 45191; Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)
7. Need of the employee or the employee's family member, including a designated person, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care (Government Code 12945.2; Labor Code 233, 246.5)
8. Need of the employee to seek or obtain any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee or the employee's child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 233, 246.5)
9. **Bereavement leave, as specified in Administrative Regulation 4161.2/4261.2/4361.2 - Personal Leaves (Education Code 45194; Government Code 12945.7)**

For the purposes specified in Items #7-8, an employee may use, in any calendar year, the amount of sick leave that would be accrued during six months at the employee's then current rate of entitlement. (Labor Code 233)

An employee may take leave for personal illness or injury at any time during the year, even if credit for such leave has not yet been accrued. However, a new full-time classified employee shall not be entitled to more than six days of sick leave, or the proportionate amount to which the employee may be entitled, until the first day of the month after the employee has completed six months of active service with the district. (Education Code 45191)

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 45191)

An employee shall reimburse the district for any unearned sick leave used as of the date of termination, **in accordance with Education Code 44042.5.**

At the beginning of each school year, employees shall be notified of the amount of sick leave they have accumulated.

The district shall not require newly employed classified employees to waive leave accumulated in a previous district. However, if the employee's previous employment was terminated for cause, the transfer of the accumulated leave shall be made only if approved by the Governing Board. (Education Code 45202)

The Superintendent or designee shall notify any classified employee whose employment with the district is terminated after at least one calendar year for reasons other than for cause that, if the employee accepts employment in another district, county office of education, or community college district within one year of the termination of employment, the employee may request that the district transfer any accumulated sick leave to the new employer. (Education Code 45202)

Additional Leave for Disabled Military Veterans

In addition to any other entitlement for sick leave with pay, a classified employee who is a former active duty member of the U.S. Armed Forces or a former or current member of the California National Guard or a Federal Reserve component shall be entitled to sick leave with pay of up to 12 days for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or higher by the U.S. Department of Veterans Affairs. An eligible employee who works less than five days per week shall be entitled to such leave in proportion to the time worked. (Education Code 45191.5)

The amount of leave shall be credited to the employee either on the date the employee receives confirmation of the submission of the disability application to the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later. When the employee receives the disability rating decision, the employee shall report that information to the Superintendent or designee. If the disability rating decision makes the employee eligible for the leave, the time used before the decision shall be counted toward the 12-day maximum leave. If the disability rating decision makes the employee ineligible for leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance. (Education Code 45191.5)

The Superintendent or designee may require verification, in accordance with the section "Verification Requirements" below, that the employee used the leave to obtain treatment of a military service-connected disability.

Leave for military-service connected disability shall be available for 12 months following the first date that the leave was credited. Leave not used during the 12-month period shall not be carried over and shall be forfeited. (Education Code 45191.5)

Notification of Absence

An employee shall notify the Superintendent or the designated manager or supervisor of the need to be absent as soon as such need is known so that the services of a substitute may be secured as necessary. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than three o'clock in the afternoon of the day preceding the day on which the employee intends to return to work. If the employee fails to notify the district and the failure results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

Continued Absence After Available Sick Leave Is Exhausted/Differential Pay

Each year, each regular classified employee shall be credited with no fewer than 100 working days of paid leave for personal illness or injury, including current year and accumulated days of leave. When the current year and accumulated days at full pay are exhausted, the remainder of the 100 days shall be compensated at least 50 percent of the employee's regular salary. Any of the 100 days of leave not used during the year in which they are credited shall be forfeited and shall not accumulate from year to year. This paid leave shall be exclusive of any other paid leave, holidays, vacation, or compensatory time to which the employee may be entitled. (Education Code 45196)

Parental Leave

During each school year, a classified employee may use all available sick leave, including accumulated sick leave, for

the purpose of parental leave for a period of up to 12 work weeks. The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of such parental leave. (Education Code 45196.1)

Eligibility for such leave shall not require 1,250 hours of service with the district during the previous 12 months. (Education Code 45196.1)

An employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave shall receive differential pay of at least 50 percent of the employee's regular salary for the remainder of the 12 work weeks. (Education Code 45196.1)

Parental leave taken pursuant to Education Code 45196.1 shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 or 12945.6, and the aggregate amount of parental leave shall not exceed 12 work weeks in a 12-month period. (Education Code 45196.1; Government Code 12945.2, 12945.6)

Extension of Leave

A permanent employee who is absent because of a personal illness or injury and who has exhausted all available sick leave, vacation, compensatory overtime, and any other paid leave shall be so notified, in writing, and offered an opportunity to request additional leave. The Board may grant the employee additional leave, paid or unpaid, for a period not to exceed six months and may renew this leave for two additional six-month periods or for lesser periods. The total additional leave granted shall not exceed 18 months. (Education Code 45195)

If the employee is still unable to return to work after all available paid and unpaid leaves have been exhausted, the employee shall be placed on a reemployment list for a period of 39 months. If during this time the employee becomes medically able, the employee shall be offered reemployment in the first vacancy in the classification of the employee's previous assignment. During the 39 months, the employee's reemployment shall take preference over all other applicants except those laid off for lack of work or lack of funds, in which case the employee shall be ranked according to seniority. (Education Code 45195)

Verification Requirements

After any absence due to illness or injury, the employee shall submit a completed and signed district absence form to the employee's immediate supervisor.

The Superintendent or designee may require verification whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the Superintendent or designee may require an employee to visit a physician selected by the district, at district expense, in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for additional leave of absence and a prognosis as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, deny the request for additional leave.

Any district request for additional verification by an employee's physician or a district-selected physician shall be in writing and shall specify that the report to be submitted to the district should not contain the employee's genetic information. Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and shall not be disclosed except in accordance with 29 CFR 1635.9.

Before returning to work, an employee who has been absent for surgery, hospitalization, or extended medical treatment may be asked to submit a letter from a physician stating that the employee is able to return to work and stipulating any necessary restrictions or limitations.

Short-Term and Substitute Employees

Except for a retired annuitant who is not reinstated to the retirement system, short-term or substitute employees who work for 30 or more days within a year of their employment shall be credited with 24 hours or three days **entitled to one hour** of paid sick leave for that year. ~~Unused every 30 hours worked. Accrued paid sick leave days shall not carry over to the following year of employment, up to a maximum of 80 hours or ten days. However, the~~

district may limit an employee's use of accrued paid sick days to 40 hours or five days in each year of employment. (Labor Code 246)

Except for a retired annuitant who is not reinstated to the retirement system, short-term or substitute employees who work for 30 or more days within a year of their employment shall accrue, on a regular basis, paid sick leave of up to 24 hours by the 120th calendar day of their employment or each calendar year or 12-month period, and at least 40 hours or five days of paid sick leave by the 200th calendar day of employment, each calendar year, or 12-month period. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 80 hours or ten days. However, the district may limit an employee's use of accrued paid sick days to 40 hours or five days in each year of employment. (Labor Code 246)

Short-term or substitute employees may begin to use accrued paid sick days on the 90th day of their employment, after which they may use the sick days as they are accrued. (Labor Code 246)

A short-term or substitute employee may use accrued sick leave for absences due to: (Labor Code 246.5)

1. The employee's own need or the need of a family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care
2. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or the employee's child, when the employee has been a victim of domestic violence, sexual assault, or stalking

Healthy Workplaces, Healthy Families Act Requirements

No employee, including a short-term or substitute employee, shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249.

To ensure the district's compliance with Labor Code 245-249, the Superintendent or designee shall:

1. At a conspicuous location in each workplace, display a poster on paid sick leave that includes the following information:
 - a. That an employee is entitled to accrue, request, and use paid sick days
 - b. The number of sick days provided by Labor Code 245-249
 - c. The terms of use of paid sick days
 - d. That discrimination or retaliation against an employee for requesting and/or using sick leave is prohibited by law and that an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against the employee
2. Provide at least ~~24~~**40** hours or ~~three~~**five** days of paid sick leave to each eligible employee to use per year and allow eligible employees to use accrued sick leave upon reasonable request
3. Provide eligible employees written notice, on their pay stub or other document issued with their pay check, of the amount of paid sick leave they have available
4. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

Ed. Code 44042.5	Wage overpayment
Ed. Code 45103	Classified service in districts not incorporating the merit system
Ed. Code 45190	Resignation and leaves of absence
Ed. Code 45191	Personal illness and injury leave; classified employees
Ed. Code 45191.5	Leave for military service-connected disability
Ed. Code 45193	Leave of absence for pregnancy; use of sick leave under certain circumstance
Ed. Code 45195	Additional leave
Ed. Code 45196	Salary deductions during sick leave; classified employees
Ed. Code 45196.1	Differential pay during parental leave up to 12 weeks after sick leave is exhausted
Ed. Code 45202	Transfer of accumulated sick leave and other benefits
Gov. Code 12945.1-12945.21	California Family Rights Act
Gov. Code 12945.6	Reproductive loss leave
Gov. Code 12945.7	Bereavement leave
Lab. Code 230	Accommodations and leave for victims of domestic violence
Lab. Code 230.1	Employers with 25 or more employees; domestic violence, sexual assault, and stalking victims; right to time off
Lab. Code 233	Leave to attend to family illness
Lab. Code 245-249	Healthy Workplaces, Healthy Families Act of 2014

Federal References

20 USC 1681-1688	Title IX of the Education Amendments of 1972; discrimination based on sex
29 CFR 1635.1-1635.12	Genetic Information Nondiscrimination Act of 2008
29 CFR 825.100-825.702	Family and Medical Leave Act of 1993
29 USC 2601-2654	Family Care and Medical Leave Act
34 CFR 106.1-106.82	Discrimination on the basis of sex; effectuating Title IX
42 USC 2000ff-2000ff-11	Genetic Information Nondiscrimination Act of 2008

Management Resources References

Court Decision	California School Employees Association v. Colton Joint Unified School District (2009) 170 Cal.App.4th 957
Court Decision	California School Employees Association v. Tustin Unified School District (2007) 148 Cal.App.4th 510
Website	CSBA District and County Office of Education Legal Services

Cross References

4032	Reasonable Accommodation
4112.42	Drug And Alcohol Testing For School Bus Drivers
4112.42	Drug And Alcohol Testing For School Bus Drivers
4112.9	Employee Notifications
4112.9-E(1)	Employee Notifications
4113.4	Temporary Modified/Light-Duty Assignment

Cross References**Description**

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4141.6	Concerted Action/Work Stoppage
4141.6	Concerted Action/Work Stoppage
4154	Health And Welfare Benefits
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4159	Employee Assistance Programs
4161	Leaves
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4212.42	Drug And Alcohol Testing For School Bus Drivers
4212.42	Drug And Alcohol Testing For School Bus Drivers
4212.9	Employee Notifications
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4213.4	Temporary Modified/Light-Duty Assignment
4216	Probationary/Permanent Status
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4254	Health And Welfare Benefits
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