

**CLASSIFIED PERSONNEL**

**Personal Illness/Injury Leave**

Classified employees employed five days a week are entitled to 12 days of paid 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. Any part-time employee who is entitled to less than three (3) days of paid sick leave due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246, if he/she is eligible. (Education Code 45191, Labor Code 245-249)

**Use of Sick Leave**

A classified employee may use sick leave for absences due to:

1. The diagnosis, care, or treatment of an existing health condition of, or preventative care for an employee or an employee's child (biological, adopted, foster, stepchild, or legal ward), an employee's spouse or registered domestic partner, the parent of an employee or employee's spouse/registered domestic partner (biological, adoptive, foster, stepparent, or legal guardian), a grandparent, a grandchild, or a sibling.
2. An employee who is a victim of domestic violence, sexual assault, or stalking, to take time off from work to:
  - a. Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the victim or his or her child;
  - b. Seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
  - c. Obtain services from a domestic violence shelter, program or rape crisis center as a result of domestic violence, sexual assault, or stalking;
  - d. Obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; or
  - e. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

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.

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 45191, Merit 6.70.2B)

An employee shall reimburse EDCOE for any unearned sick leave used as of the date of his/her termination. (Merit 6.70.2C)

Earned unused sick leave may be counted, in a proportionate amount, to service credit for computing retirement in accordance with the Education Code.

### **Personal Necessity Leave (CBA 13)**

A classified employee may elect to use up to seven (7) days of accumulated sick leave for personal necessity during any school year.

The classified employee shall not be required to secure advance permission for leave taken for any of the following reasons:

- A. Death or serious illness of a member of the immediate family.
- B. Accident involving the employee's person or property or person or property of the immediate family.
- C. Compelling personal importance.

#### Compelling Personal Importance Defined:

Compelling personal importance is not intended to nor does it include absences for the following purposes:

- A. Participating in recreational activities or attendance at sporting events.
- B. Outside employment or other means of earning additional income for the employee.

Upon return from use of compelling personal importance, the classified employee shall advise his/her supervisor in writing that the use of such leave was not for one of the reasons listed above.

The classified employee shall be required to secure advance permission from the County Superintendent of Schools for leaves of absence for personal necessity for reasons other than those listed in 13.3.2

### **Additional Leave for Disabled Military Veterans**

In addition to any other entitlement for sick leave with pay, a newly hired classified employee who is a military veteran with a military service-connected disability rated at 30 percent or higher by the U.S. Department of Veterans Affairs shall be entitled to sick leave with pay of up to 12 days for the purpose of undergoing medical treatment for his/her military service-connected disability. An eligible employee employed less than five days per week shall be entitled to such leave in proportion to the time he/she works.

The amount of leave shall be credited to the employee on the first day of employment and shall remain available for the following 12 months of employment. Leave not used during the 12-month period shall not be carried over and shall be forfeited. (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.

### **Continued Absence After Available Sick Leave Is Exhausted/Differential Sick Leave**

When sick leave has been exhausted and a classified employee is absent because of illness or accident, the employee shall be paid the difference between his/her salary and the salary of a substitute for the period not to exceed five (5) months, under the following conditions:

1. The employee must provide a medical doctor's verification of the illness or accident which caused the employee to be absent.
2. The employee must have exhausted all other paid leave (vacation, compensatory time, etc.)

For purposes of differential leave, vacation will be considered exhausted when only three (3) days remain. In the event that an employee is absent due to illness and has fewer than three (3) days' vacation, these days need not be exhausted prior to being placed in differential status. In all cases, the employee may choose, upon written request to his/her supervisor, to use all available vacation prior to being placed in differential status. (Education Code 45196, Merit 6.70.3, CBA Article 13.2.6)

### **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.

If the employee is still unable to resume his/her duties 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 able to resume the duties of his/her position,

he/she shall be offered reemployment in the first vacancy in the classification of his/her 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 his/her seniority. (Education Code 45195, Merit 6.70.2I)

### **Differential Pay for Parental Leave**

Classified employees may elect parental leave for baby bonding for the birth, adoption, or foster placement of a child for up to twelve (12) weeks. A classified employee's request for parental leave shall be submitted no later than four (4) weeks before the leave is to begin. To be eligible for parental leave, a classified employee must have worked for EDCOE for at least twelve (12) months. This leave is available to either parent. Eligibility for parental leave pursuant to Education Code 45196.1 shall not require 1,250 hours of service with EDCOE during the previous 12 months.

While absent from work on parental leave, classified employees shall be entitled to up to twelve (12) weeks of differential pay. While on parental leave, accumulated sick leave shall be used. In the event that accumulated sick leave is exhausted, classified employees shall be paid the difference between their regular salary and the salary of a substitute.

Non-paid days during breaks in school are not included in the twelve (12) weeks. If the school year ends before the twelve (12) week period ends, the remainder of parental leave may be taken in the following school year.

Only one twelve (12) week period of parental leave per birth, adoption, or foster placement may be taken. Parent leave runs concurrently with California Family Rights Act Leave. Medical benefits remain in force during parental leave. (Education Code 45196.1, CBA Article 13.2)

### **Verification Requirements**

Normally, the Employer may require a physician's or practitioner's verification of illness only if a classified employee has been on sick leave for five (5) or more consecutive days. However, in cases of suspected abuse of sick leave, satisfactory proof of illness may be required at any time as long as such requirement of proof is not used to harass an employee.

Classified employees absent through illness or injury must notify their immediate supervisor as early as possible. Upon return, the employee must complete the appropriate form indicating the date(s) of the sick leave taken.

In addition, the Superintendent or designee may require an employee to visit a physician selected by EDCOE, 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 EDCOE should not contain the employee's genetic information.

Any genetic information received by EDCOE 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 his/her physician stating that he/she is able to return to work and stipulating any recommended restrictions or limitations.

### **Limited-Term and Substitute Employees**

Except for a retired annuitant who is not reinstated to the retirement system, any limited-term or substitute employee who works for 30 or more days within a year of his/her employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

Any limited-term or substitute employee may begin to use accrued paid sick days on the 90th day of his/her employment, after which he/she may use the sick days as they are accrued. (Labor Code 246)

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

1. His/her 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 his/her 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 temporary or substitute employee, shall be denied the right to use accrued sick days and EDCOE 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 EDCOE'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 amount 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 EDCOE discriminates or retaliates against him/her.
2. Provide at least 24 hours or three 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.

Legal Reference:

EDUCATION CODE

45103 Substitute employees

45190 Leaves of absence and vacations

45191 Leaves of absence for illness and injury

45191.5 Leave for military service connected disability

45193 Leave of absence for pregnancy (re use of sick leave under certain circumstances)

45195 Additional leave for nonindustrial accident or illness; reemployment preference

45196 Salary; deductions during sick leave

45196.1 Differential pay during parental leave up to 12 weeks after sick leave is exhausted

45202 Transfer of accumulated sick leave and other benefits

MERIT REGULATIONS 6.70

COLLECTIVE BARGAINING AGREEMENT ARTICLE 13

LABOR CODE

230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off

230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off

233 Illness of child, parent, spouse or domestic partner

245-249 Healthy Workplaces, Healthy Families Act of 2014

COURT DECISIONS

California School Employees Association v. Colton Joint Unified School District, (2009) 170  
Cal.App.4th 957

California School Employees Association v. Tustin Unified School District, (2007) 148  
Cal.App.4th 510

ATTORNEY GENERAL OPINIONS

53 Ops.Cal.Atty.Gen. 111 (1970)

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