

PERSONAL ILLNESS / INJURY LEAVE

Classified employees employed five days per week are entitled to 12 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, except when the sick leave will be less than the district grants short-term or substitute employees pursuant to Labor Code 246. (Education Code 45191; Labor Code 245-249)

(cf. 4161/4261/4361 – Leaves)

Classified employees may use sick leave for absences due 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 with other persons having a contagious disease during the employee's performance of his/her duties (Education Code 45199)
2. Pregnancy, childbirth, and recovery (Education Code 45193)

(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

3. Personal necessity as specified in Education Code 45207

(cf. 4161.2/4261.2/4361.2 - Personal Leaves)

4. Medical or 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)

(cf. 4261.11 - Industrial Accident/Illness Leave)

6. Illness of the employee's child, parent, spouse, domestic partner, or domestic partner's child for up to the amount of leave that would be accrued during six months for personal illness or injury (Labor Code 233)
7. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5 (Labor Code 246.5)
8. 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 (Labor Code 246.5)

PERSONAL ILLNESS / INJURY LEAVE (continued)

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 until he/she 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)

At the beginning of each school year, each classified employee shall be notified of the amount of sick leave which he/she has accumulated. An employee shall reimburse the district for any unearned sick leave used as of the date of his/her termination.

The Superintendent or designee shall notify any classified employee who leaves the district after at least one school year of employment that if the employee accepts employment in another district, county office of education, or community college district within one year, he/she may request that the district transfer his/her accumulated sick leave to the new employer. (Education Code 45202)

An employee shall notify the Superintendent or the designated manager or supervisor of his/her 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 no later than one hour prior to the end of their regular shift of the day preceding the day on which he/she 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/50% Pay

After an employee has exhausted his/her sick leave, vacation, compensatory overtime and other available paid leave, he/she shall receive 50% of his/her regular salary. The employee is entitled to this 50% pay for a period of five months or less. The five-month period shall begin on the first day of absence and shall run concurrently with any other leaves of absence. (Education Code 45196)

The five-month period shall commence on the first day of the leave of absence and shall run concurrently with any other paid leave.

PERSONAL ILLNESS / INJURY LEAVE (continued)**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)

(cf. 4216 - Probationary/Permanent Status)

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)

Verification Requirements

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

As of the third (3rd) consecutive day of absence the Superintendent or designee may require additional written verification by the employee's physician or medical practitioner for any absence related injury or illness. Such verification shall be required 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.

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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 his/her physician stating that he/she is able to return to work and stipulating any recommended restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

Notifications

When available paid leave has been exhausted, the employee shall be so notified in writing and shall be offered an opportunity to request additional leave. (Education Code 45195)

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 amount of sick days provided by Labor Code 245-249
 - c. The terms of use of paid sick days- Accrued paid sick leave must carry over to the following year and will be capped at 48 hours (or 6 days)
 - d. That discrimination or retaliation against an employee for requesting or using sick leave is prohibited by law and an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against him/her

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2. 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
3. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years.

Short-Term and Substitute Employees

Any short-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. Such 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. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

Legal Reference:

EDUCATION CODE

45103 Substitute employees

45190 Leaves of absence and vacations

45191 Leaves of absence for illness and injury

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

45202 Transfer of accumulated sick leave and other benefits

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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