

CSBA Sample

Administrative Regulation

Personal Illness/Injury Leave

AR 4161.1 4361.1

Personnel

Note: The following administrative regulation is subject to collective bargaining. Education Code 44978 provides a minimum of 10 days of personal illness or injury leave (sick leave) per year for certificated employees working five days a week. The Governing Board may allow additional days at its discretion; if it does so, the following paragraph should be revised accordingly.

Note: Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act) require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days or more within a year of their employment, including temporary and substitute employees. Pursuant to Labor Code 246, a district may use a different sick leave accrual method which provides for the accrual to be on a regular basis so that employees accrue at least 24 hours of sick leave or paid time off by the 120th calendar day of their employment or each calendar year or 12-month period.

Note: The provisions of Labor Code 245-249 are very broad and only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all of the conditions for this exemption, this administrative regulation has been drafted to include the requirements of Labor Code 245-249. Any district which has a collective bargaining agreement that meets all of the conditions for exemption may modify this administrative regulation accordingly.

Note: For additional requirements of Labor Code 245-249, see the section titled "Healthy Workplaces, Healthy Families Act Requirements" below. For paid sick leave for temporary and substitute certificated employees, see BP/AR 4121 - Temporary/Substitute Personnel. For sick leave for classified employees, see AR 4261.1 - Personal Illness/Injury Leave.

Certificated employees employed five school days per week are entitled to 10 days' leave of absence with full pay for personal illness or injury (sick leave) per school year of service. Employees who work less than five school days per week (part-time employees) shall be granted sick leave in proportion to the time they work. However, any part-time employees who are entitled to less than three days of paid sick leave per year due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246, if they are eligible. (Education Code 44978;

Labor Code 245-249)

(cf. 4161/4261/4361 - Leaves)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

Use of Sick Leave

Note: Items #1-8 below reflect allowable uses of sick leave specified in law. The district may expand this list to include any additional purposes authorized by law, authorized by the district, or included in a bargaining agreement.

Certificated employees may use sick leave for absences due to:

1. Accident or illness, whether or not the absence arises out of and in the course of employment; quarantine which results from contact in the course of employment with other persons having a contagious disease; or temporary inability to perform assigned duties because of illness, accident, or quarantine (Education Code 44964)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)

2. Pregnancy, miscarriage, childbirth, and related recovery (Education Code 44965, 44978)

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

3. Personal necessity (Education Code 44981)

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

Note: Optional item #4 below may be revised as desired to specify a different minimum increment for sick leave.

4. Medical and dental appointments, in increments of not less than one hour

5. Industrial accidents or illnesses when leave granted specifically for that purpose has been exhausted (Education Code 44984)

(cf. 4161.11/4261.11/4361.11 - Industrial Accident/Illness Leave)

Note: Pursuant to the Family and Medical Leave Act (FMLA) (29 USC 2612) and California Family Rights Act (CFRA) (Government Code 12945.2), a district is required to grant leave to an eligible employee to bond with a child after the birth, adoption, or foster care placement of the child, if the district employs 50 or more employees within 75 miles of the worksite where the employee requesting the leave is employed. For this purpose, employees may, but are not required to, use sick leave for any otherwise unpaid FMLA or CFRA leave.

Note: Government Code 12945.6 extends the right to parental leave to an eligible employee who is not covered by FMLA or CFRA when the district employs 20-49 employees within 75 miles of the worksite where the employee requesting the leave is employed.

Note: For further information regarding parental leave, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave.

6. Need of the employee to bond with a child within one year of the child's birth, adoption, or foster care placement (parental leave) (Education Code 44977.5; Government Code 12945.2, 12945.6; 29 USC 2612; 29 CFR 825.112)

Note: Pursuant to Labor Code 233, any district that provides sick leave to its employees is required to permit them to use sick leave, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the purposes specified in items #7-8 below.

Note: For the purpose of using sick leave to attend to the health care needs of a family member, as specified in item #7 below, Labor Code 245.5 defines "family member" as an employee's spouse, registered domestic partner, child (biological, adopted, or foster child; stepchild; legal ward; or a child to whom the employee stands in loco parentis), parent (biological, adoptive, or foster parent; stepparent; legal guardian of an employee or the employee's spouse or registered domestic partner; or a person who stood in loco parentis when the employee was a minor child), grandparent, grandchild, or sibling.

Note: For additional information about leaves for victims of domestic violence, sexual assault, or stalking granted in accordance with item #8 below, see AR 4161.2/4261.2/4361.2 - Personal Leaves.

7. Need of the employee or employee's family member, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care (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/or 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)

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 sick leave at any time during the school year, even if credit for sick leave has not yet been accrued. (Education Code 44978)

Note: The following paragraph is optional.

An employee shall reimburse the district for any unearned sick leave used as of the date of termination.

Unused days of sick leave shall be accumulated from year to year without limitation.
(Education Code 44978)

Note: The following optional paragraph may be revised to reflect district practice.

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 new employees to waive leave accumulated in a previous district.
(Education Code 44979, 44980)

Note: Pursuant to Education Code 44979-44980, certificated employees are entitled to have their accumulated sick leave transferred with them in the circumstances specified in the following optional paragraph.

The Superintendent or designee shall notify any certificated employee who leaves the district after at least one school year of employment that if the employee accepts a certificated position in another district, county office of education, or community college district within one year, the employee may request that the district transfer any accumulated sick leave to the new employer.
(Education Code 44979, 44980)

Additional Leave for Disabled Military Veterans

In addition to any other entitlement for sick leave with pay, a certificated 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 10 days for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or more 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 44978.2)

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 10-day maximum leave. If the disability rating decision makes the employee ineligible for the leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance. (Education Code 44978.2)

***Note: Pursuant to Education Code 44978.2, the district may require proof that a leave granted under this law is used for treatment of a military service-connected disability. The

following paragraph may be revised to reflect district practice.***

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 44978.2)

Notification of Absence

Note: The following optional section may be revised to reflect district practice.

An employee shall notify the district of the need to be absent as soon as such need is known, so that substitute services may be secured. 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.

(cf. 4121 - Temporary/Substitute Personnel)

Continued Absence After Available Sick Leave Is Exhausted/Differential Pay

Note: Pursuant to Education Code 44977, employees who are absent due to illness for up to five months after exhausting all available sick leave must receive their regular salary minus the cost of a substitute. Alternatively, Education Code 44983 allows districts to adopt a rule that gives certificated employees 50 percent or more of their regular salary during the period of absence. When an employee is absent for a cause other than illness, Education Code 44977 and 44983 provide that the amount deducted from the employee's salary shall be determined according to the rules and regulations adopted by the Board as long as such rules are not in conflict with State Board of Education regulations.

Note: Option 1 below is for use by districts that subtract the cost of a substitute from the absent employee's salary pursuant to Education Code 44977. Option 2 is mandated pursuant to Education Code 44983 for districts that choose to give certificated employees 50 percent or more of their regular salary during the period of absence, and may be revised to specify a percentage higher than 50 percent in accordance with district practice.

Note: If not covered in the district's bargaining agreement, the district may add provisions to this section reflecting salary deductions for employees absent longer than five months.

OPTION 1:

During each school year, when a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or accident, continues to be absent for an additional period of up to five school months, the district shall deduct from the employee's regular salary for that period the actual cost of a substitute to fill the position. If the district has made every reasonable effort to secure the services of a substitute and has been unable to do so, the amount that would have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

An employee shall not be provided more than one five-month period per illness or accident. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)

~~OPTION 2:~~

~~After a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or accident, continues to be absent for an additional period of up to five months, the employee shall receive at least 50 percent of the employee's regular salary during the additional period of absence. (Education Code 44983)~~

Absence Beyond Five-Month Period/Reemployment List

Note: The following paragraph is required for districts that select Option 1 (i.e., differential pay) in the section "Continued Absence After Available Sick Leave Is Exhausted/Differential Pay" above and should be carefully considered by districts that select Option 2 (i.e., 50 percent pay). Education Code 44978.1 requires the establishment of a reemployment list for employees who are unable to resume their duties after the five-month period provided pursuant to Education Code 44977.

Note: Although Education Code 44978.1 does not explicitly require a reemployment list for districts selecting Option 2, such districts should be aware that failure to establish a reemployment list may subject employees to termination following a five-month absence. Therefore, any district that selects Option 2 and currently maintains a reemployment list for employees who are absent beyond the five-month period, or that wishes to establish such a list, should consult legal counsel before changing its policy or practices.

If a certificated employee is not medically able to return to work after the five-month period provided pursuant to Education Code 44977, the employee shall be placed either in another position or on a reemployment list. Placement on the reemployment list shall be for 24 months for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period. If during this time the employee becomes medically able, the employee shall be returned to employment in a position for which the employee is credentialed and qualified. (Education Code 44978.1)

(cf. 4116 - Probationary/Permanent Status)

Parental Leave

Note: The following section is subject to any conflicting provision in a collective bargaining agreement that provides greater parental leave rights.

During each school year, a certificated 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 44977.5)

Note: Unlike leave taken pursuant to Government Code 12945.2, leave taken pursuant to Education Code 44977.5 does not require an employee to have at least 1,250 hours of service with the district during the previous 12-month period in order to be eligible for parental leave. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for further information on requirements related to the California Family Rights Act.

Eligibility for such leave shall not require 1,250 hours of service with the district during the previous 12 months. (Education Code 44977.5)

Note: Pursuant to Education Code 44977.5, the district is required to provide differential pay to a certificated employee for up to 12 work weeks when the employee has exhausted all available sick leave, including accumulated sick leave, and continues to be absent due to parental leave pursuant to Government Code 12945.2. Such an employee is entitled to receive differential pay, calculated in the same manner described in Option 1 or 2 in the section "Continued Absence After Available Sick Leave Is Exhausted/Differential Pay" above. As amended by AB 2012 (Ch. 994, Statutes of 2018), Education Code 44977.5 requires that, regardless of the type of differential pay system used by the district, employees must receive at least 50 percent of their regular salary for any portion of the 12-week parental leave that remains following the exhaustion of sick leave. The following paragraph may be revised to specify a percentage higher than 50 percent in accordance with district practice.

Note: Since Education Code 44977.5 does not expressly require districts to provide differential pay to employees who are eligible for parental leave pursuant to Government Code 12945.6, it is unclear whether such employees would be entitled to differential pay. Districts should consult legal counsel if they have questions regarding differential pay for such employees.

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 44977.5)

Parental leave taken pursuant to Education Code 44977.5 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 44977.5;

Government Code 12945.2, 12945.6)

Verification Requirements

Note: Education Code 44978 mandates the Board to adopt regulations requiring proof of illness or injury and prescribing the means of verification. However, Education Code 44978 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. For verification requirements for employees on leave pursuant to the Family and Medical Leave Act, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. The following section should be modified to reflect district practice and any procedures which have been specified in bargaining agreements.

Note: Labor Code 233 requires districts to allow their employees to use sick leave for the purposes specified in Labor Code 246.5, the paid sick leave law. Because the paid sick leave law is silent on requests for verification, and actually requires an employer to provide an employee with paid sick days upon oral or written request, districts should be cautious in requiring verification for sick leave used for the purposes specified in Labor Code 246.5 (items #7-8 in the section "Use of Sick Leave" above). Although a district is permitted to require verification from an employee who is a victim of domestic violence, sexual assault, or stalking, pursuant to Labor Code 230 and 230.1, a general insistence on verification could be deemed a violation of Labor Code 246.5. Any district with questions regarding its authority related to verification should consult legal counsel.

After any absence due to illness or injury, the employee shall verify the absence by submitting 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 employee's need for further 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 further leave.

Note: 42 USC 2000ff-1, the Genetic Information Nondiscrimination Act, and its implementing regulations, 29 CFR 1635.1-1635.12, specify that it is unlawful for a district to request, require, or purchase employees' or their family member's individual genetic information except in complying with the medical certification requirements for family care and medical leave purposes or with the employee's prior written authorization. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. Pursuant to 29 CFR 1635.9, any such information received by the district must be kept confidential as specified below.

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 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 duty and stipulating any necessary restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Healthy Workplaces, Healthy Families Act Requirements

Note: Pursuant to Labor Code 245-249, all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act could result in an enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this law should consult its legal counsel.

No 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 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

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

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

44964 Power to grant leave of absence in case of illness, accident, or quarantine

44965 Granting of leaves of absence for pregnancy and childbirth

44976 Transfer of leave rights when school is transferred to another district

44977 Salary deduction during absence from duties up to five months after sick leave is exhausted

44977.5 Differential pay during parental leave up to 12 weeks after sick leave is exhausted

44978 Provisions for sick leave of certificated employees

44978.1 Inability to return to duty; placement in another position or on reemployment list

44978.2 Leave for military service connected disability

44979 Transfer of accumulated sick leave to another district

44980 Transfer of accumulated sick leave to a county office of education

44981 Leave of absence for personal necessity

44983 Exception to sick leave when district adopts specific rule

44984 Industrial accident or illness

44986 Leave of absence for disability allowance applicant

GOVERNMENT CODE

12945.1-12945.2 California Family Rights Act

12945.6 Parental leave

LABOR CODE

220 Sections inapplicable to public employees

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

234 Absence control policy

245-249 Healthy Workplaces, Healthy Families Act of 2014

CODE OF REGULATIONS, TITLE 5

5601 Transfer of accumulated sick leave

UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993, as amended

UNITED STATES CODE, TITLE 42

2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.702 Family and Medical Leave Act of 1993

1635.1-1635.12 Genetic Information Nondiscrimination Act of 2008

COURT DECISIONS

Veguez v. Governing Board of Long Beach Unified School District, (2005) 127 Cal.App.4th 406

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