

## **All Personnel**

AR 4161.2

## **PERSONAL LEAVES**

4261.2

4361.2

**Personal leaves granted to district employees shall be used as permitted in this administrative regulation, other Board-approved policy or district regulation, or applicable collective bargaining agreement.**

For the purpose of any personal leave offered pursuant to state law, a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (Family Code 297.5)

Whenever possible, employees shall request personal leaves in advance and prepare suitable instructions, including lesson plans as applicable, for a substitute employee.

*(cf. 4121 - Temporary/Substitute Personnel)*

### **Bereavement**

Employees are entitled to a leave of up to three days, or five days if out-of-state travel is required, upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)

*(cf. 4161/4261/4361 - Leaves)*

Members of the immediate family include: (Education Code 44985, 45194)

1. The mother, father, grandmother, grandfather, or grandchild of the employee or of the employee's spouse
2. The employee's spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister
3. Any relative living in the employee's immediate household

At the employee's request, bereavement leave may be extended under personal necessity leave provisions as provided in the section "Personal Necessity" below. (Education Code 44981, 45207)

### **Personal Necessity**

Certificated employees may use a maximum of seven days of their accrued personal illness/injury leave (sick leave) during each school year for reasons of personal necessity. Classified employees may use a maximum of eight days of their accrued personal illness/injury leave (sick leave) during each school year for reasons of personal necessity. (Education Code 44981, 45207)

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)

(cf. 4261.1 - Personal Illness/Injury Leave)

Acceptable reasons for the use of personal necessity leave include:

1. Death of a member of the employee's immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)
2. An accident involving the ~~employee's person or~~ **employee or his/her** property or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)
3. ~~A serious~~ **Illness, preventive care, or other need** of a member of the ~~certified~~ employee's ~~immediate~~ family, **as defined in Labor Code 245.5** (Education Code 44981; **Labor Code 246.5**)

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

4. A classified employee's appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or other order (Education Code 45207)
5. Fire, flood, or other immediate danger to the home of the employee
6. Personal business of a serious nature which the employee cannot disregard

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, personal necessity leave shall not be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether or not a request reflects personal necessity.

Advance permission shall not be required of ~~any an~~ employee in any case involving the death of a member of the employee's immediate family, an accident involving the employee's person or property or the person or property of a member of his/her immediate family, or the ~~serious~~ **illness or other need** of a member of the employee's ~~immediate~~ family. (Education Code 44981, 45207)

**However, For any leave that is planned, or where the need for leave is foreseeable, an employee shall notify the Superintendent or designee in advance. In all other circumstances,** the employee shall notify the Superintendent or designee of the need for the leave as soon as practicable.

After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed district absence form to his/her immediate supervisor.

## Legal Duties

An employee may take time off work in order to: (Labor Code 230)

1. Serve on an inquest jury or trial jury
2. Comply with a subpoena or other court order to appear as a witness

Notices, summons, and subpoenas for court appearances shall be submitted to the district office when requesting leave.

A classified employee called for jury duty shall be granted leave with pay up to the amount of the difference between his/her regular earnings and any amount received for jury fees. (Education Code 44037)

A certificated employee **who is called for jury duty** also shall be granted leave **for jury duty** with pay up to the **amount of the** difference between his/her regular earnings and any **amount received for** jury fees **he/she received**.

**Employees** An employee shall be granted leave **with pay** to appear in court as **a** witnesses other than **a** litigants or to respond to an official order from another governmental jurisdiction for reasons not brought about through the connivance or misconduct of the employee. Such an employees shall receive **pay up to the amount of** the difference between **the employee's his/her** regular earnings and any **amount received for** witness fees **he/she received**.

## Leaves for Crime Victims

An employee may be absent from work in order to attend judicial proceedings related to a crime when he/she is a victim, or an immediate family member, registered domestic partner, or child of a registered domestic partner of a victim, of any of the following crimes: (Labor Code 230.2)

1. A violent felony as defined in Penal Code 667.5(c)
2. A serious felony as defined in Penal Code 1192.7(c)
3. A felony provision of law proscribing theft or embezzlement

For these purposes, the employee may use vacation, personal leave, personal illness/injury leave, unpaid leave, or compensatory time off that is otherwise available to the employee. (Labor Code 230.2)

Prior to taking time off, an employee shall give his/her supervisor a copy of the notice of each scheduled proceeding that is provided by the responsible agency, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employee shall, within a reasonable time after the absence, provide documentation evidencing the judicial proceeding from the court or government agency setting the hearing, the district attorney or

prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim. (Labor Code 230.2)

The district shall keep confidential any records pertaining to the employee's absence from work by reason of this leave. (Labor Code 230.2)

### **Leaves for Victims of Domestic Violence, Sexual Assault and Stalking**

An employee who is a victim of domestic violence, sexual assault, or stalking as defined by law may use vacation, sick leave, personal leave, or compensatory time off that is otherwise available to him/her under the terms of his/her employment to attend to the following activities: (Labor Code 230, 230.1, 246.5)

1. 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 employee or his/her child
2. Seek medical attention for injuries caused by domestic violence, sexual assault, or stalking
3. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking
4. Obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking
5. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation

Prior to taking time off, an employee shall give reasonable notice to his/her supervisor, unless advance notice is not feasible. When an unscheduled absence occurs, the employee shall provide, within a reasonable period of time, certification of the absence in the form of any of the following: (Labor Code 230, 230.1)

1. A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking
2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court
3. Documentation from a domestic violence or sexual assault counselor as defined in Evidence Code 1037.1 or 1035.2, licensed medical professional or health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking

The district shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230, 230.1)

### **Personal Leave for a ~~Child's School~~ Child-Related Activities**

Any employee who is a parent/guardian ~~or grandparent~~ of one or more children ~~enrolled in of an age to attend any of~~ grades K-12 or ~~a licensed day care facility~~ **a program offered by a licensed child care provider** may use up to 40 hours of personal leave, vacation, or compensatory time off each school year in order to: ~~participate in school or day care activities.~~ Such leave shall not exceed eight hours in any month of the year. (Labor Code 230.8)

1. Find, enroll, or reenroll his/her child in a school or with a licensed child care provider or to participate in activities of the school or child care provider, provided the employee gives reasonable advance notice of the absence. Time off for this purpose shall not exceed eight hours in any calendar month. (Labor Code 230.8)
2. Address a school or child care emergency, provided the employee gives notice. An emergency exists when the child cannot remain in school or with a child care provider due to one of the following circumstances:
  - a. A request by the school or child care provider that the child be picked up
  - b. An attendance policy, excluding planned holidays, that prohibits the child from attending or requires that the child be picked up from the school or child care provider
  - c. Behavioral or discipline problems
  - d. Closure or unexpected unavailability of the school or child care provider, excluding planned holidays
  - e. A natural disaster, including, but not limited to, fire, earthquake, or flood

*(cf. 5148 - Child Care and Development)*

**For purposes of this leave, parent/guardian includes a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to a child. (Labor Code 230.8)**

In lieu of using vacation, personal leave, or compensatory time off, eligible employees may take unpaid leave for this purpose.

If **both two or more** parents/guardians of a child are employed at the same work site, this leave shall be allowed for the ~~first~~ parent/guardian who ~~applies~~ **first gives notice to the district**. Simultaneous absence by ~~the second~~ **another** parent/guardian **of the child** may be granted by the Superintendent or designee. (Labor Code 230.8)

Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed ~~day-care facility~~ **child care provider** that he/she ~~participated in school or licensed day-care facility activities~~ **engaged in permitted child-related activities** on a specific date and at a particular time. (Labor Code 230.8)

### **Service on Education Boards and Committees**

Upon request, a certificated employee shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education board, commission, committee, or group authorized by Education Code 44987.3 provided that all of the following conditions are met: (Education Code 44987.3)

1. The service is performed within the state.
2. The board, commission, organization, or group informs the district in writing of the service.
3. The board, commission, organization, or group agrees, prior to the service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.

### **Employee Organization Activities**

Upon request, any certificated or classified employee shall be granted a leave of absence without loss of compensation to serve as an elected officer of a district employee organization or any statewide or national employee organization with which the employee organization is affiliated. The leave shall include, but is not limited to, absence for purposes of attending periodic, stated, special, or regular meetings of the body of the organization. (Education Code 44987, 45210)

*(cf. 4140/4240/4340 - Bargaining Units)*  
*(cf. 4143/4243 - Negotiations)*

Upon request of an employee organization in the district or its state or national affiliate, a reasonable number of unelected classified employees shall be granted a leave of absence without loss of compensation for the purpose of attending important organizational activities authorized by the organization. The employee organization shall provide reasonable notification to the Superintendent or designee when requesting a leave of absence for employees for this purpose. (Education Code 45210)

When leave is granted for any of the above purposes, the employee organization shall reimburse the district within 10 days after receiving the district's certification of payment of compensation to the employee. (Education Code 44987, 45210)

### **Spouse on Leave from Military Deployment**

An employee who works an average of 20 hours or more per week and whose spouse is a member of the United States Armed Forces, National Guard, or reserves may take up to 10 days

of unpaid leave during a period that his/her spouse is on leave from deployment during a military conflict, as defined in Military and Veterans Code 395.10. (Military and Veterans Code 395.10)

Within two business days of receiving official notice that his/her spouse will be on leave from deployment, the employee shall provide the Superintendent or designee with notice of his/her intention to take the leave. The employee shall submit written documentation certifying that his/her spouse will be on leave from deployment during the time that the leave is requested. (Military and Veterans Code 395.10)

### **Leave for Emergency Duty**

An employee may take time off to perform emergency duty as a volunteer firefighter, a reserve peace officer, or emergency rescue personnel. (Labor Code 230.3)

Any employee who performs duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel shall be permitted to take temporary leaves of absence, not to exceed an aggregate total of 14 days per calendar year, for the purpose of engaging in fire, law enforcement, or emergency rescue training. (Labor Code 230.4)

### **Civil Air Patrol Leave**

An employee may take up to 10 days of unpaid leave per calendar year, beyond any leave otherwise available to him/her, to respond to an emergency operational mission of the California Civil Air Patrol, provided that the employee has been employed by the district for at least a 90-day period immediately preceding the leave. Such leaves shall not exceed three days for a single mission, unless an extension is granted by the governmental entity authorizing the mission and is approved by the Superintendent or designee. (Labor Code 1501, 1503)

The employee shall give the district as much advance notice as possible of the intended dates of the leave. The Superintendent or designee may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave and may deny the leave if the employee fails to provide the required certification. (Labor Code 1503)

#### *Legal Reference:*

##### EDUCATION CODE

- 44036-44037 *Leaves of absence for judicial and official appearances*
- 44963 *Power to grant leaves of absence (certificated)*
- 44981 *Leave of absence for personal necessity (certificated)*
- 44985 *Leave of absence due to death in immediate family (certificated)*
- 44987 *Service as officer of employee organization (certificated)*
- 44987.3 *Leave of absence to serve on certain boards, commissions, etc.*
- 45190 *Leaves of absence and vacations (classified)*
- 45194 *Bereavement leave of absence (classified)*
- 45198 *Effect of provisions authorizing leaves of absence*
- 45207 *Personal necessity (classified)*
- 45210 *Service as officer of employee organization (classified)*
- 45240-45320 *Merit system, classified employees*

##### EVIDENCE CODE

*1035.2 Sex assault counselor; definition*

*1037.1 Domestic violence counselor; definition*

**FAMILY CODE**

*297-297.5 Registered domestic partner rights, protections, and benefits*

**GOVERNMENT CODE**

*3543.1 Release time for representatives of employee organizations*

*12945.1-12945.2 California Family Rights Act*

**LABOR CODE**

*230-230.2 Leave for victims of domestic violence, sexual assault, or specified felonies*

*230.3 Leave for emergency personnel*

*230.4 Leave for volunteer firefighters*

*230.8 Leave to visit child's school*

*233 Illness of child, parent, spouse, domestic partner or domestic partner's child*

*234 Absence control policy*

*246.5 Paid sick days, purposes for use*

*1500-1507 Civil Air Patrol leave*

**MILITARY AND VETERANS CODE**

*395.10 Leave when spouse on leave from military deployment*

**PENAL CODE**

*667.5 Violent felony, defined*

*1192.7 Serious felony, defined*

**CALIFORNIA CONSTITUTION**

*Article 1, Section 8 Religious discrimination*

**UNITED STATES CODE, TITLE 29**

*2601-2654 Family and Medical Leave Act*

**UNITED STATES CODE, TITLE 42**

*2000d-2000d-7 Title VII, Civil Rights Act of 1964*

**COURT DECISIONS**

*Rankin v. Commission on Professional Competence, (1988) 24 Cal.3d 167*

**PUBLIC EMPLOYMENT RELATIONS BOARD DECISIONS**

*Berkeley Council of Classified Employees v. Berkeley Unified School District, (2008) PERB Decision No. 1954*

***Management Resources:***

**WEB SITES**

*California Federation of Teachers: <http://www.cft.org>*

*California School Employees Association: <http://www.csea.com>*

*California Teachers Association: <http://www.cta.org>*

*Public Employment Relations Board: <http://www.perb.ca.gov>*

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Moss Landing, California