

**AR4161.1 Personal Illness/Injury Leave
Personnel**

Status: ADOPTED
April 10, 2019

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 employee who is 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).

Use of Sick Leave

Certificated employees may use sick leave for absences due to:

1. Accident or illness, whether 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,
2. Pregnancy, miscarriage, childbirth, and related recovery (Education Code 44965, 44978)
3. Personal necessity (Education Code 44981)
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)
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)
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
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.

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)

Unused days of sick leave shall be accumulated from year to year without limitation.

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

accumulated.

The County Office shall not require new employees to waive leave accumulated in a previous district or County Office.

The County Superintendent or designee shall notify any certificated employee who leaves the County Office 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 County Office transfer any accumulated sick leave to the new employer.

Additional Leave for Disabled Military Veterans

An 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 members 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 County 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)

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

An employee shall notify the County Office 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 County Office. If the duration of absence becomes shorter than estimated, the employee shall notify the County Office 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 County Office 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

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 from his/her duties for

an additional period of up to five school months, the County Office shall deduct from the employee's regular salary for that period the actual cost of a substitute to fill the position. If the County Office 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.

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)

Absence Beyond Five-Month Period/Reemployment List

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)

Parental Leave

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)

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

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

After any absence, due to illness or injury, the employee shall verify the absence by submitting a completed and signed County Office absence form to immediate supervisor.

The County 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 County Superintendent or designee may require an employee to visit a physician selected by the County Office, at County Office 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 County Superintendent or designee may, after giving notice to the employee, deny further leave.

Any County Office request for additional verification by an employee's physician or a County Office selected physician shall be in writing and shall specify that the report to be submitted to the County Office should not contain the employee's genetic information. Any genetic information received by the County Office 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.

Healthy Workplaces, Healthy Families Act Requirements

No employee shall be denied the right to use accrued sick days, and the County Office 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 County Office's compliance with Labor Code 245-249, the County 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 County Office 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
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
825.100-825.800 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 40