



## PROVISIONS RELATING TO ALL EMPLOYEES

BP 5007

### POLICY -- LEAVES OF ABSENCE

The County Board shall provide for paid and unpaid leaves of absence for employees in accordance with law, board policy, administrative regulation, collective bargaining agreements, and merit system rules, as applicable.

The County Board recognizes the following justifiable reasons for employee absence:

1. Personal illness or injury
2. Industrial accident or illness
3. Family care and medical leave
4. Military service
5. Personal necessity and personal emergencies
6. Disability leave for certificated employees in accordance with Education Code 44986
7. Vacations for classified staff, and certificated management staff, as applicable
8. Sabbaticals for purposes of study or training related to the employee's job duties
9. Attendance at work-related meetings and staff development opportunities
10. Compulsory leave

#### Long-Term Leaves

With County Superintendent or designee approval, an employee may receive a leave of absence, without pay and without accruing seniority or service credit, for a period of up to one school year. Applications for long-term leave shall be made in writing and shall state the purpose for which leave is requested. All long-term leave agreements shall be in writing and shall state the terms and conditions of the leave, including the conditions governing the employee's return.

At the end of a long-term leave, the employee shall be reinstated to a similar position as that held at the time leave was granted, unless otherwise agreed upon.

The County Superintendent or designee shall consider any written request by an employee to return to work prior to the expiration date of the leave.

### Administrative and Supervisory Personnel

Certificated administrative and supervisory employees who are not subject to the County Education Office's bargaining agreement for certificated employees shall generally be entitled to those leave provisions provided in the bargaining agreement for other certificated employees unless otherwise specified in individual contract, memorandums of understanding, board policy, administrative regulation, or law.

Classified administrative and supervisory employees who are not subject to the County Education Office's bargaining agreement for classified employees shall generally be entitled to those leave provisions provided in the bargaining agreement for other classified employees unless otherwise specified in individual contract, memoranda of understanding, board policy, administrative regulation, law, or merit system rules, as applicable.

### Legal Reference:

#### EDUCATION CODE

22850-22856 Pension benefits, STRS members on military leave  
44018 Compensation for employees on active military duty  
44036-44037 Leaves of absence for judicial and official appearances  
44043.5 Catastrophic leave  
44800 Effect of active military service on status of employees  
44842 Failure to provide notice or to report to work  
44940 Sex offenses and narcotic offenses; compulsory leave of absence  
44962-44988 Leaves of absence (certificated)  
45059 Employee ordered to active military/naval duty, computation of salary  
45190-45210 Leaves of absence (classified)

#### FAMILY CODE

297-297.5 Registered domestic partner rights, protections and benefits

#### GOVERNMENT CODE

3543.1 Release time for representatives of employee organizations  
3543.2 Scope of representation  
12945.1-12945.2 California Family Rights Act  
20990-21013 Pension benefits, PERS members on military leave

#### LABOR CODE

230-230.2 Leaves 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 or domestic partner

MILITARY AND VETERANS CODE

395-395.9 Military leave

395.10 Leave when spouse on leave from military deployment

UNITED STATES CODE, TITLE 29

2601-2654 Family and Medical Leave Act of 1993

UNITED STATES CODE, TITLE 38

4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

ADOPTED BY COUNTY BOARD: July 3, 1975

REVISED: May 7, 1992, April 7, 1994, September 7, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.1

### ADMINISTRATIVE REGULATION -- LEAVES

#### Failure to Return to Service After Leave

In the case of a certificated employee who was on leave of absence for 20 or more consecutive working days after April 30 of the previous school year, the County Education Office may terminate the employment of such an employee if all of the following circumstances exist: (Education Code 44842)

1. The employee fails to report for duty, without good cause, at the beginning of the school year after having notified the County Superintendent or designee of the employee's intention to remain in service with the County Education Office in accordance with Education Code 44842.
2. The County Education Office had specifically notified the employee, at least five days in advance, of the time and place at which the employee was to report to work.
3. The employee did not request or was not granted a leave of absence authorized by the County Superintendent or designee.

In any such case, the County Education Office may terminate the employee's employment on the day following 20 consecutive days of absence. (Education Code 44842)

#### Use of Leaves by Classified Employees

A classified employee may interrupt or terminate vacation leave in order to begin another type of paid leave without a return to active service, as long as the employee provides adequate notice and relevant supporting information regarding the basis for such interruption or termination. (Education Code 45200)

APPROVED BY COUNTY SUPERINTENDENT:

July 3, 1975

REVISED: May 7, 1992, April 7, 1994, July 25, 2000, August 7, 2000, November 7, 2000, September 15, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.2

### ADMINISTRATIVE REGULATION – 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 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 the employee is eligible. (Education Code 44978; Labor Code 245-249)

#### Use of Sick Leave

Certificated 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; quarantine which results from contact with other persons having a contagious disease during the employee's performance of the employee's duties; or temporary inability to perform assigned duties because of illness, accident, or quarantine (Education Code 44964)
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 quarter of one hour (fifteen minutes)
5. Industrial accidents or illnesses when leave granted specifically for that purpose has been exhausted (Education Code 44984)
6. Need of the employee or the 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)
7. 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 #6-7, an employee may use, in any calendar year, the amount of sick leave the employee would accrue during six months at the

employee's 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)

An employee shall reimburse the County Education Office for any unearned sick leave used as of the date of the employee's separation.

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

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

The County Education Office shall not require new employees to waive leave accumulated in a previous district. (Education Code 44979, 44980)

The County Superintendent or designee shall notify any certificated employee who leaves the County Education 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 Education Office transfer the employee's 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 newly hired certificated employee who is a military veteran with a military service-connected disability rated at 30 percent or more by the U.S. Department of Veterans Affairs shall be entitled to sick leave with pay of up to 10 days for the purpose of undergoing medical treatment for the employee's 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 the employee works. (Education Code 44978.2)

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 44978.2)

The County 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.

## Notification of Absence

An employee shall notify the County Education Office of the employee's 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 Education Office. If the duration of absence becomes shorter than estimated, the employee shall notify the County Education 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 Education 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 the employee's duties for an additional period of up to five school months, the employee shall receive the employee's regular salary minus the actual cost of a substitute to fill the position. If the County Education 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. (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)

## Absence Beyond Five-Month Period/Reemployment List

If a certificated employee is not medically able to resume the employee's duties 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)

## Differential Pay for Parental Leave

During each school year, any certificated employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave (baby bonding) pursuant to Government Code 12945.2 shall receive differential pay for 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. Such parental leave shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 and the aggregate amount of parental leave shall not exceed 12 workweeks in a 12-month period. Eligibility for parental leave pursuant to Education Code 44977.5 shall not require 1,250 hours of service with the County Education Office during the previous 12 months. (Education Code 44977.5)

#### Verification Requirements

After any absence due to illness or injury, the employee shall verify the absence by submitting a completed and signed County Education Office absence form to the employee's immediate supervisor. Verification of illness by a medical doctor may be required by the County Education Office for any absence of five (5) or more days for which sick leave is claimed.

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

Any genetic information received by the County Education 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 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 the employee's 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



Education 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 County Education Office violation of Labor Code 245-249.

To ensure the County Education 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 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 the County Education 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 paycheck, 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

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 42

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

CODE OF FEDERAL REGULATIONS, TITLE 29

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

APPROVED BY THE COUNTY SUPERINTENDENT:

September 15, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.3

### ADMINISTRATIVE REGULATION – INDUSTRIAL ACCIDENT/ILLNESS LEAVE

An eligible employee shall be entitled to a leave of absence for an industrial accident or illness arising in the course of the employee's assigned duties. (Education Code 44984, 45192)

For such leave, the employee shall be granted no more than sixty (60) working days in any one fiscal year for the same industrial accident or illness.

Allowable industrial accident or illness leave shall not be accumulated from year to year. (Education Code 44984, 45192)

When an employee is absent from the employee's duties because of an industrial accident or illness: (Education Code 44043, 44044, 44984, 45192)

1. The leave shall start on the first day of absence.
2. During the period of absence, the employee shall be paid such portion of the employee's wage or salary that, when added to the award granted under state workers' compensation laws, will not exceed the employee's normal wage or salary.
3. The leave shall be reduced by one day for each day of authorized absence, regardless of an award granted under workers' compensation laws.
4. When the leave overlaps into the next fiscal year, the employee is entitled to only the amount of unused leave due the employee for the same illness or injury.

During any paid leave of absence, the employee shall retain any workers' compensation check received on account of an industrial accident or illness. The employee shall notify the County Superintendent or designee that the employee has received such check. The County Superintendent or designee shall then issue payment of the employee's normal wage or salary less an amount equivalent to the face amount of the workers' compensation check and other appropriate deductions, including, but not limited to, employee retirement contributions. Employee benefits shall be computed on the basis of the employee's regular wage or salary prior to the deduction of any amounts for temporary disability payments. (Education Code 44044)

Absence for industrial accident or illness shall not be considered a break in service of the employee. An employee using such leave shall retain all status and benefits to which the employee would otherwise be entitled.

When available industrial accident or illness leave has been exhausted, the employee shall be so notified in writing and shall be offered an opportunity to request any additional paid or unpaid leave available to the employee. (Education Code 45192)

Upon expiration of allowable leave for an industrial accident or illness, the employee may use personal illness and injury leave provided pursuant to Education Code 44977, 44978, 44983, or 45191, as applicable, provided that such leave, when added to any continuing workers' compensation award, does not result in a payment to the employee of more than the employee's full wage or salary. (Education Code 44984, 45192)

If a certificated employee is unable to resume the duties of the employee's position after exhausting all accumulated sick leave, including the consecutive five-month period provided by Education Code 44977, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 24 months if the employee is a probationary employee or 39 months if the employee is a permanent employee. If the employee becomes medically able to resume duties during the period of reemployment eligibility, the employee shall be returned to employment in a position for which the employee is credentialed and qualified. (Education Code 44978.1)

If a classified employee has exhausted all available leaves of absence, paid or unpaid, and is not medically able to resume the duties of the employee's position, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 39 months. If the employee becomes medically able to resume duties during the period of reemployment eligibility, the employee shall be employed in a vacant position in the class of the employee's previous assignment over all other candidates except those on a reemployment list established because of lack of work or lack of funds, in which case the employee shall be listed in accordance with seniority regulations. If the employee is medically released to return to duty but fails to accept an appropriate assignment, the employee shall be dismissed. (Education Code 45192)

#### Legal Reference:

##### EDUCATION CODE

44043 Temporary disability

44044 Temporary disability checks; waiver of endorsement to district

44977 Salary deductions during absence from duties

44978 Provisions for certificated employee sick leave

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

44983 Exception to sick leave  
44984 Industrial accident and illness leave, certificated employees  
45191 Personal illness and injury leave, classified employees  
45192 Industrial accident and illness leave, classified employees

LABOR CODE

3200-6002 Workers' compensation

Management Resources:

WEB SITES

Department of Industrial Relations: <http://www.dir.ca.gov>

APPROVED BY THE COUNTY SUPERINTENDENT:

September 15, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.4

### ADMINISTRATIVE REGULATION – PERSONAL LEAVES

Personal leaves granted to County Education Office employees shall be used as permitted in this administrative regulation, other board policy or County Education Office 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.

#### 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)

Members of the immediate family include:

1. The mother, father, stepmother, stepfather, grandmother, grandfather, or grandchild of the employee or of the employee's spouse or domestic partner
2. The employee's spouse or domestic partner, son, son-in-law, daughter, daughter-in-law, stepchild, brother, sister, brother-in-law, or sister-in-law
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

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

Acceptable reasons for the use of personal necessity leave include:

1. Diagnosis, care, or treatment of an existing health condition of, or preventive care for a member of the employee's family, as defined in Labor Code 245.5 (Education Code 44981; Labor Code 246.5)
2. 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 45207)
3. Death of a close personal friend or a member of the employee's family not included in the definition of "immediate family" in Bereavement Leave (Ed Code 44981)
4. An accident involving the employee or the employee's property or the person or property of a member of the employee's immediate family (Education Code 45207)
5. Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction (Education Code 45207)
6. The observance of religious holidays
7. Matters related to adoption/paternity

#### Personal Compelling

Employees may use a maximum of five of the ten Personal Necessity days of their accrued personal illness/injury leave (sick leave) during each school year for reasons of a compelling nature as defined in their respective collective bargaining agreements or as approved by the County Superintendent or designee.

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 County Superintendent or designee shall have final discretion as to whether or not a request reflects personal necessity.

Advance permission shall not be required of 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 the employee's immediate family, or the illness, preventive care, or other need of a member of the employee's family. (Education Code 44981, 45207)

For any leave that is planned, or where the need for leave is foreseeable, an employee shall notify the County Superintendent or designee in advance. In all other

circumstances, the employee shall notify the County 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 County Education Office absence form to the employee's 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 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 the employee's 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 with pay up to the difference between the employee's regular earnings and any jury fees the employee received.

An employee shall be granted leave with pay to appear in court as a witness other than a litigant 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 employee shall receive the difference between the employee's regular earnings and any witness fees the employee received.

### Leaves for Crime Victims

An employee may be absent from work in order to attend judicial proceedings related to a crime when the employee 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 the employee's 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 County Education Office 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 the employee under the terms of the employee's 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 the employee's 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 the employee's 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 County Education Office shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230, 230.1)

#### Personal Leave for Child-Related Activities

Any employee who is a parent/guardian of one or more children of an age to attend any of grades K-12 or 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: (Labor Code 230.8)

1. Find, enroll, or reenroll the employee's 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.
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

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 two or more parent/guardian of a child are employed at the same work site, this leave shall be allowed for the parent/guardian who first gives notice to the County Education Office. Simultaneous absence by another parent/guardian of the child may be granted by the County Superintendent or designee. (Labor Code 230.8)

Upon request by the County Superintendent or designee, the employee shall provide documentation from the school or licensed child care provider that the employee 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 County Education Office in writing of the service.
3. The board, commission, organization, or group agrees, prior to the service, to reimburse the County Education Office, upon the County Education Office's request, for compensation paid to the employee's substitute and for actual related administrative costs.

#### Employee Organization Activities

Upon request and consistent with collective bargaining agreements, any certificated or classified employee shall be granted a leave of absence without loss of compensation to serve as an elected officer of a County Education Office 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)

Upon request of an employee organization in the County Education Office 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 County 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 County Education Office within 10 days after receiving the County Education Office's certification of payment of compensation to the employee. (Education Code 44987, 45210)

#### Spouse or Domestic Partner on Leave from Military Deployment

An employee who works an average of 20 hours or more per week and whose spouse or domestic partner 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 the employee's spouse or domestic partner 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 the employee's spouse or domestic partner will be on leave from deployment, the employee shall provide the County Superintendent or designee with notice of the employee's intention to take the leave. The employee shall submit written documentation certifying that the employee's spouse or domestic partner 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 the employee, to respond to an emergency operational mission of the California Civil Air Patrol, provided that the employee has been employed by the County Education Office 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 County Superintendent or designee. (Labor Code 1501, 1503)

The employee shall give the County Education Office as much advance notice as possible of the intended dates of the leave. The County 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>

APPROVED BY COUNTY SUPERINTENDENT:

September 15, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.5

### ADMINISTRATIVE REGULATION – PROFESSIONAL LEAVES

The County Superintendent or designee may grant a leave of absence of up to one year to certificated employees for the purpose of permitting study or travel which will benefit the schools and students of the County Education Office. (Education Code 44966)

To be eligible for a leave of absence for these purposes, the employee must have served in the County Education Office for at least seven consecutive years preceding the leave. No more than one such leave of absence shall be granted in each seven-year period. No other types of leaves shall be considered a break in service for purposes of meeting this requirement and the period of such absence shall not be included as service in computing the seven consecutive years of service required for a professional leave. (Education Code 44967)

The County Superintendent or designee may require that such leaves of absence be taken in separate six-month periods or separate quarters as long as the total leave is completed within three years. Any period of service by the employee between the separate periods of leave shall comprise a part of the service required for a subsequent leave of absence. (Education Code 44966)

Every employee granted a leave of absence for these purposes may be required to perform such services during the leave as the County Superintendent or designee and employee agree upon in writing. (Education Code 44968)

Compensation during the leave shall be paid in the manner authorized by Education Code 44969 and 44970.

Unless the employee agrees in writing with the County Superintendent or designee not to receive compensation during the leave, the employee shall receive such compensation during the leave as the County Superintendent or designee and employee agree upon in writing, which shall be not less than the difference between the employee's salary and the salary of a substitute employee. In lieu of such a difference, the County Superintendent or designee may pay one-half of the salary of the employee or any additional amount up to and including the full salary of the employee. (Education Code 44968, 44968.5)

As a condition to being granted such leave, the employee shall agree in writing to render service in the County Education Office following the employee's return for a period equal to twice the period of the leave. (Education Code 44969)

At the end of the leave, the employee shall be reinstated in the position the employee held when the leave was granted. (Education Code 44973)

Legal Reference:

EDUCATION CODE

44966-44973 Leaves of absence for study or travel

APPROVED BY THE COUNTY SUPERINTENDENT:

September 15, 2017





## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.6

### ADMINISTRATIVE REGULATION -- **MILITARY LEAVE**

Military leave shall be granted in accordance with applicable state and federal law to employees performing military duties on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, examination to determine fitness for duty, and performance of funeral honors duty. (Education Code 44800; Military and Veterans Code 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9; 38 USC 4301, 4303, 4316)

An employee who needs to be absent from the County Education Office to fulfill the employee's military service shall provide advance written or verbal notice to the County Superintendent or designee, unless the giving of such notice is precluded by military necessity or is otherwise impossible or unreasonable. (38 USC 4312; 20 CFR 1002.85, 1002.86)

#### Salary/Compensation

An employee shall receive the employee's salary or compensation for the first 30 days of any one absence for military leave or during one fiscal year, under any of the following conditions:

1. **Active Military Training or Exercises:** The employee is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises, or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)
  - a. The employee has been employed by the County Education Office for at least one year immediately prior to the day the military leave begins.
  - b. The ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.
2. **Active Military Duty:** The employee is on military leave, other than a temporary military leave, to engage in active military duty as a member of the reserve corps or force of the United States Armed Forces, the National Guard, or the Naval Militia, provided that the employee has been employed by the County Education Office for at least one year immediately prior to the day the military leave begins. (Military and Veterans Code 389, 395.02)

3. War or Other Emergency: The employee, however long employed by the County Education Office, is a member of the National Guard who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty. (Military and Veterans Code 395.05)
4. Inactive Duty Training: The employee is a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia who is engaged in temporary inactive duty training, provided that the employee has been employed by the County Education Office for at least one year immediately prior to the day the military leave begins and the ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.

In determining the length of County Education Office employment when necessary to determine eligibility for compensation for military leave, all recognized military service performed during and prior to County Education Office employment shall be included.

For classified employees, 30 days' compensation shall be one month's salary. For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code 45059)

Certificated employees shall not be entitled to compensation during non-teaching, non-paying months of the year.

During the period of military leave, an employee may, upon the employee's own request, use any vacation or similar paid leave accrued before the commencement of the military leave. The County Education Office shall not require the employee to use such leave. (38 USC 4316; 20 CFR 1002.153)

#### Benefits

An employee may elect to continue the employee's health plan coverage during the military leave. The maximum period of coverage for the employee and the employee's dependents shall be either 24 months from the beginning of the leave or until the day after the employee fails to apply for or return to employment, whichever is less. (38 USC 4317; 20 CFR 1002.164)

An employee on military leave may be required to pay the employee cost, if any, of any funded benefit to the extent that other employees on leave are so required. (38 USC 4316)

An employee absent for 30 days or fewer shall not be required to pay more than the employee share for such coverage. An employee absent for 31 days or more may be required to pay not more than 102 percent of the full premium under the plan. (38 USC 4317; 20 CFR 1002.166)

## Vacation and Sick Leave Accrual

An employee on temporary military leave under the conditions described in item #1 Active Military Training or Exercises, in the section entitled "Salary/Compensation" above, shall continue to accrue the same vacation, sick leave, and holiday privileges to which the employee would otherwise be entitled if not absent. (Military and Veterans Code 395)

An employee on military leave who is serving in active duty in time of war, national emergency, or United Nations military or police operation shall not accrue sick leave or vacation leave during the period of such leave. (Military and Veterans Code 395.1)

However, an employee who is a National Guard member on active duty as described in item #3 War or Other Emergency, in the section entitled "Salary/Compensation" above, shall not suffer any loss or diminution of vacation or holiday privileges because of the employee's leave of absence. (Military and Veterans Code 395.05)

## Pension Plan Service Credit

Pension plan service credit and vesting shall continue during an employee's military leave as though no break in service had occurred. Payment of employer and employee contributions shall be made in accordance with law for members of the State Teachers' Retirement System or Public Employees' Retirement System. (Education Code 22850-22856; Government Code 20990-21013)

## Employment Status

Absence for military leave shall not affect the classification of any certificated employee. In the case of a certificated probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code 44800)

## Reinstatement Rights

At the conclusion of the military duty, an employee shall be promptly reinstated in the position held at the beginning of the leave, at the salary to which the employee would otherwise have been entitled, except under the conditions noted below. (Education Code 44800; Military and Veterans Code 395, 395.2; 38 USC 4304, 4313; 20 CFR 1002.180-1002.181)

Any employee who performs active military duty in time of war, national emergency, or United Nations military or police operation has a right to return to the employee's position within six months of an honorable discharge or placement on inactive duty. Reinstatement rights shall not be extended to any such employee who fails to return

within 12 months after the first date upon which the employee could terminate or could cause to be terminated the employee's active service. (Education Code 44800; Military and Veterans Code 395.1)

When an employee has been on military leave for reasons other than war or national emergency, the time frame for reinstatement shall depend on the length of military service as follows: (38 USC 4312; 20 CFR 1002.115, 1002.118)

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service, provided the employee has a period of eight hours to rest following transportation to the employee's residence.
2. For a leave of 31-180 days, the employee shall submit a written or verbal application for reinstatement not later than 14 days after the completion of military service.
3. For a leave of more than 180 days, the employee shall submit a written or verbal application for reinstatement within 90 days after the completion of military service.

In cases where reporting within the periods specified in items #1 and #2 above is impossible or unreasonable through no fault of the employee, the employee shall report as soon as possible after the expiration of the period. (38 USC 4312; 20 CFR 1002.115, 1002.117)

An employee who is hospitalized for, or convalescing from, an illness or injury incurred in or aggravated during the performance of military service shall report for duty or submit an application for reinstatement at the end of the period that is necessary to recover from such illness or injury, but no more than two years after the completion of military service unless circumstances beyond the employee's control make reporting within the two-year period impossible or unreasonable. (38 USC 4312; 20 CFR 1002.116)

Upon receiving an application for reinstatement, the County Superintendent or designee shall reinstate the employee as soon as practicable under the circumstances of the employee's case, but within a time period not to exceed two weeks, absent unusual circumstances. (20 CFR 1002.181)

If the employee's previous position has been abolished, the employee shall be reinstated in a position of like seniority, status, and pay, if such position exists, or to a comparable vacant position for which the employee is qualified. (Military and Veterans Code 395, 395.1; 38 USC 4313; 20 CFR 1002.192)

An employee failing to apply for reinstatement within the appropriate period does not automatically forfeit the employee's rights, but shall be subject to the County Education Office regulations and/or County Board's rules governing unexcused absences. (38 USC 4312)

The County Superintendent or designee may elect not to reinstate an employee following military leave if any of the following conditions exists:

1. The County Education Office's circumstances have so changed as to make such re-employment impossible or unreasonable, such as a reduction in force that would have included the employee. (38 USC 4312; 20 CFR 1002.139)
2. The accommodation, training, or effort described in 38 USC 4313(a)(3), (a)(4), or (b)(2)(B) would impose an undue hardship on the County Education Office as defined in 20 CFR 1002.5 or 1002.198. (38 USC 4312; 20 CFR 1002.139)
3. The employee's position was for a brief, nonrecurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC 4312; 20 CFR 1002.139)
4. The employee's cumulative length of absence and length of all previous military leave while employed with the County Education Office exceeds five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312; 20 CFR 1002.99-1002.103)
5. The employee was separated from military service with a disqualifying discharge or under other than honorable conditions. (Military and Veterans Code 395.1; 20 USC 4304, 4312; 20 CFR 1002.134-1002.138)

#### Notices

The County Superintendent or designee shall provide employees a notice of the rights, benefits, and obligations of employees granted military leave and of the County Education Office under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC 4301-4334. (38 USC 4334)

This requirement may be met by posting the notice where the County Education Office customarily places notices for employees. (38 USC 4334)

#### Legal Reference:

##### EDUCATION CODE

22850-22856 Pension benefits, STRS members on military leave  
44018 Compensation for employees on active military duty  
44800 Effect of active military service on status of employees  
45059 Employee ordered to military/naval duty - computation of salary

GOVERNMENT CODE

18540 Definition of armed forces  
18540.3 Recognized military service  
20990-21013 Pension benefits, PERS members on military leave

MILITARY AND VETERANS CODE

146 Events justifying calling of militia into active service  
389 Definitions; temporary military leave  
394 Nondiscrimination based on military service  
395-395.9 Military leave

UNITED STATES CODE, TITLE 38

4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

CODE OF FEDERAL REGULATIONS, TITLE 20

1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994

COURT DECISIONS

Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503  
Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65

ATTORNEY GENERAL OPINIONS

77 Ops.Cal.Atty.Gen. 209 (1994)  
69 Ops.Cal.Atty.Gen. 185 (1986)  
63 Ops.Cal.Atty.Gen. 924 (1978)  
19 Ops.Cal.Atty.Gen. 132 (1952)  
18 Ops.Cal.Atty.Gen. 178 (1951)

Management Resources:

U.S. DEPARTMENT OF LABOR PUBLICATIONS

A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA), rev. April 2005

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

The Uniformed Services Employment and Reemployment Rights Act (USERRA), NSBA Federal File: Guidance on Federal School Law, 2003

WEB SITES

National Committee for Employer Support of the Guard and Reserve: <http://www.esgr.org>  
National School Boards Association: <http://www.nsba.org>  
U.S. Department of Labor, USERRA: <http://www.dol.gov/vets/programs/userra>

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September 15, 2017



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.7

### ADMINISTRATIVE REGULATION – FAMILY CARE AND MEDICAL LEAVE

The County Education Office shall not deny any eligible employee the employee's right to family care, medical, or pregnancy disability leave (PDL) pursuant to the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA) or restrain or interfere with the employee's exercise of such right. In addition, the County Education Office shall not discharge an employee or discriminate or retaliate against the employee for taking such leave or for the employee's opposition to or challenge of any unlawful County Education Office practice in relation to any of these laws or for the employee's involvement in any related inquiry or proceeding. (Government Code 12945, 12945.2; 2 CCR 11094; 29 USC 2615)

#### Definitions

The words and phrases defined below shall have the same meaning throughout this administrative regulation except where a different meaning is otherwise specified.

Child (son or daughter) means a biological, adopted, or foster child; a stepchild; a legal ward; or a child to whom the employee stands in loco parentis, as long as the child is under 18 years of age or an adult dependent child. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611)

Eligible employee for FMLA and CFRA purposes means an employee who has been employed with the County Education Office for at least 12 months and who has at least 1,250 hours of service with the County Education Office during the previous 12-month period. However, these requirements shall not apply when an employee applies for PDL. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.110)

Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is: (2 CCR 11035)

1. Unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or to other persons
2. Suffering from severe "morning sickness" or needs to take time off for prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, postpartum depression, childbirth, loss or end of pregnancy, recovery from childbirth or loss or end of pregnancy, or any other pregnancy-related condition

Parent means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse or domestic partner's parents. (Government Code 12945.2; 2 CCR 11087; 29 USC 2611; 29 CFR 825.122)

Serious health condition means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or the employee's child, parent, or spouse or domestic partner, including, but not limited to, treatment for substance abuse, that involves either of the following: (Government Code 12945.2; 2 CCR 11087, 11097; 29 USC 2611; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity

A person is considered an inpatient when a health care facility formally admits the person to the facility with the expectation that the person will remain overnight and occupy a bed, even if it later develops that the person can be discharged or transferred to another facility and does not actually remain overnight.

Incapacity means the inability to work, attend school, or perform other regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
  - a. A period of incapacity of more than three consecutive full days
  - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
  - c. Any period of incapacity due to pregnancy or for prenatal care under FMLA
  - d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
  - e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300, including same sex partners in marriage, or a registered domestic partner within the meaning of Family Code 297-297.5. (Family Code 297, 297.5, 300; 2 CCR 11087; 29 CFR 825.122)



## Eligibility

The County Education Office shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child (baby bonding)
2. To care for the employee's child, parent, or spouse or domestic partner with a serious health condition
3. The employee's own serious health condition that makes the employee unable to perform one or more essential functions of the employee's position
4. Any qualifying exigency arising out of the fact that the employee's spouse or domestic partner, child, or parent is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)
5. To care for a covered servicemember with a serious injury or illness if the covered servicemember is the employee's spouse or domestic partner, child, parent, or next of kin, as defined

In addition, the County Education Office shall grant PDL to any female employee who is disabled by pregnancy, childbirth, or other related medical condition. (Government Code 12945; 2 CCR 11037)

## Terms of Leave

An eligible employee shall be entitled to a total of 12 work weeks of FMLA or CFRA leave during any 12-month period, except in the case of leave to care for a covered servicemember as provided under "Military Caregiver Leave" below. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945.2; 29 USC 2612)

This 12-month period shall be a rolling period measured backward from the date an employee uses any family care and medical leave, as defined in 29 CFR 825.200. (29 CFR 825.200)

In addition, for each pregnancy, any female employee who is disabled by pregnancy, childbirth, or other related condition shall be entitled to PDL for the period of the disability not to exceed four months. For a part-time employee, the four months shall be calculated on a proportional basis. (Government Code 12945; 2 CCR 11042)

PDL shall run concurrently with FMLA leave for disability caused by an employee's

pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks, for the reason of the birth of her child or to bond with or care for the child. (Government Code 12945, 12945.2; 2 CCR 11046, 11093)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. (2 CCR 11090; 29 USC 2612)

If both parents of a child work for the County Education Office, their family care and medical leave related to the birth or placement of the child shall be limited to a combined total of 12 work weeks. This restriction shall apply regardless of the legal status of both parents' relationship. (Government Code 12945.2; 2 CCR 11088; 29 USC 2612)

#### Use/Substitution of Paid Leave

An employee shall use the employee's accrued vacation leave, other accrued time off, and any other paid time off negotiated with the County Education Office for any otherwise unpaid FMLA or CFRA leave not involving the employee's own serious health condition. For PDL, CFRA, or FMLA leave due to an employee's own serious health condition, the employee shall use accrued sick leave and may use accrued vacation leave and other paid time off at the employee's option. (Government Code 12945, 12945.2; 2 CCR 11044; 29 USC 2612)

The County Education Office and employee may also negotiate for the employee's use of any additional paid or unpaid time off instead of using the employee's CFRA leave. (2 CCR 11092)

#### Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or the employee's child, parent, or spouse or domestic partner may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the County Education Office shall limit leave increments to the shortest period of time that the County Education Office's payroll system uses to account for absences or use of leave provided it is not to be greater than one hour. (2 CCR 11042, 11090; 29 USC 2612)

The basic minimum duration of leave for the birth or placement of a child shall be two weeks. However, the County Education Office shall grant a request for such leave of less than two weeks on any two occasions. (2 CCR 11090; 29 USC 2612)

The County Education Office may require an employee to transfer temporarily to an

available alternative position if the employee is pregnant and provides medical certification from her health care provider of a medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on the employee's planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 11041, 11090; 29 USC 2612)

### Request for Leave

The County Education Office shall consider an employee's request for PDL or family care and medical leave only if the employee provides at least verbal notice sufficient to make the County Education Office aware of the need to take the leave and the anticipated timing and duration of the leave. (2 CCR 11050, 11091)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement. However, the employee must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the County Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 11091)

The County Education Office shall respond to requests for leave as soon as practicable, but no later than five business days after receiving the employee's request. (2 CCR 11091)

Based on the information provided by the employee, the County Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. Failure of an employee to respond to permissible inquiries regarding the leave request may result in denial of CFRA protection if the County Education Office is unable to determine whether the leave is CFRA qualifying. (2 CCR 11091; 29 CFR 825.300)

When an employee is able to foresee the need for the PDL or family care and medical leave at least 30 days in advance of the leave, the employee shall provide the County Education Office with at least 30 days advance notice before the leave. When the 30 days notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the County Education Office with notice as soon as practicable. Failure of an employee to provide required notice may result in a denial of leave. (2 CCR 11050, 11091)

In all instances, the employee shall consult with the County Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to County Education Office operations. (Government Code 12945.2; 2 CCR 11050, 11091)

#### Certification of Health Condition

Within five business days of an employee's request for family care and medical leave for the employee's own or the employee's child's, parent's, or spouse or domestic partner's serious health condition, the County Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the County Education Office's request, the employee shall provide the certification within 15 days, unless either the County Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 11091; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 11087; 29 USC 2613)

1. The date on which the serious health condition began
2. The probable duration of the condition
3. If the employee is requesting leave to care for a child, parent, or spouse or domestic partner with a serious health condition, both of the following:
  - a. Statement that the serious health condition warrants the participation of the employee to provide care, such as by providing psychological comfort, arranging for third party care, or directly providing or participating in the medical care of the child, parent, or spouse or domestic partner during a period of the treatment or supervision
  - b. Estimated amount of time the health care provider believes the employee needs to care for the child, parent, or spouse or domestic partner
4. If the employee is requesting leave because of the employee's own serious health condition, a statement that due to the serious health condition, the employee is unable to work at all or is unable to perform one or more essential functions of the employee's job
5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

When an employee has provided sufficient medical certification to enable the County Education Office to determine whether the employee's leave request is FMLA/CFRA-eligible, the County Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The County Superintendent or designee may also retroactively designate leave as FMLA/CFRA leave as long as appropriate notice is given to the employee and there is no harm or injury to the employee. (2 CCR 11091; 29 CFR 825.301)

If the County Superintendent or designee doubts the validity of a certification that accompanies a request for leave for the employee's own serious health condition, the County Superintendent or designee may require the employee to obtain a second opinion from a County Education Office-approved health care provider, at County Education Office expense. If the second opinion is contrary to the first, the County Superintendent or designee may require the employee to obtain a third medical opinion from a third health care provider approved by both the employee and the County Education Office, again at County Education Office expense. The opinion of the third health care provider shall be final and binding. (Government Code 12945.2; 2 CCR 11091; 29 USC 2613)

For PDL, the County Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is unforeseen, the County Superintendent or designee shall request the medical certification within two business days after the leave commences. The County Superintendent or designee may request certification at some later date if the County Superintendent or designee has reason to question the appropriateness of the leave or its duration. (2 CCR 11050)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the County Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 11050)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 11050)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the County Education Office may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 11050; 29 USC 2613)

The County Superintendent or designee shall not request any genetic information related to an employee except as authorized by law in accordance with the California Genetic Information Nondiscrimination Act of 2011.

#### Release to Return to Work

Upon expiration of an employee's PDL or family care and medical leave taken for the employee's own serious health condition, the employee shall present certification from the health care provider that the employee is able to resume work.

#### Rights to Reinstatement

Upon granting an employee's request for PDL or FMLA/CFRA leave, the County Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 11043, 11089; 29 USC 2614)

However, the County Education Office may refuse to reinstate an employee returning from FMLA or CFRA leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 2 CCR 11089; 29 USC 2614)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of County Education Office employees who are employed within 75 miles of the employee's worksite.
2. The refusal is necessary to prevent substantial and grievous economic injury to County Education Office operations.
3. The County Education Office informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

The County Education Office may also refuse to reinstate an employee to the same or a comparable position if the FMLA/CFRA leave was fraudulently obtained by the employee. (2 CCR 11089; 29 CFR 825.216)

The County Education Office may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 11043)

#### Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, the employee shall maintain the employee's status with the County Education Office and the leave shall not constitute a break in service for purposes of longevity, seniority

under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 2 CCR 11092; 29 USC 2614)

For up to a maximum of four months for PDL and 12 work weeks for other family care and medical leave, the County Education Office shall continue to provide an eligible employee the group health plan coverage that was in place before the employee took the leave. The employee shall reimburse the County Education Office for premiums paid during the leave if the employee fails to return to County Education Office employment after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control. (Government Code 12945.2; 2 CCR 11044, 11092; 29 USC 2614; 29 CFR 825.213)

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the County Education Office shall not make plan payments for an employee during any unpaid portion the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 11044, 11092)

#### Military Family Leave Resulting from Qualifying Exigencies

An eligible employee may take up to 12 work weeks of unpaid FMLA leave, during each 12-month period established by the County Education Office in the section entitled "Terms of Leave" above, for one or more qualifying exigencies while the employee's child, parent, or spouse or domestic partner who is a military member is on covered active duty or on call to covered active duty status. (29 USC 2612; 29 CFR 825.126)

Covered active duty means duty during the deployment of a member of the regular Armed Forces to a foreign country or duty during the deployment of a member of the National Guard or Reserves to a foreign country under a call or an order to active duty in support of a contingency operation pursuant to law. (29 USC 2611; 29 CFR 825.126)

Qualifying exigencies include time needed to: (29 CFR 825.126)

1. Address issues arising from short notice deployment of up to seven calendar days from the date of receipt of call or order of short notice deployment
2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status

3. Arrange child care or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings
4. Make or update financial and legal arrangements to address a military member's absence
5. Attend counseling provided by someone other than a health care provider
6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment
7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings
8. Care for a military member's parent who is incapable of self-care when the care is necessitated by the military member's covered active duty
9. Address any other event that the employee and County Education Office agree is a qualifying exigency

The employee shall provide the County Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

An employee who is requesting leave for qualifying exigencies shall provide the County Superintendent or designee with a copy of the military member's active duty orders, or other documentation issued by the military, and the dates of the service. In addition, the employee shall provide the County Superintendent or designee with certification of the qualifying exigency necessitating the leave. The certification shall contain the information specified in 29 CFR 825.309.

The employee's qualifying exigency leave may be taken on an intermittent or reduced work or leave schedule basis. (29 CFR 825.302)

During the period of qualified exigency leave, the County Education Office's rule regarding an employee's use of the employee's accrued vacation leave and any other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

#### Military Caregiver Leave

The County Education Office shall grant an eligible employee up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date the leave is taken, to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, the employee must be the



spouse or domestic partner, son, daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness
2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran

Son or daughter of a covered servicemember means the biological, adopted, or foster child, stepchild, legal ward, or a child of any age for whom the covered servicemember stood in loco parentis. (29 CFR 825.127)

Parent of a covered servicemember means the covered servicemember's biological, adopted, step, or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except "parents in law"). (29 CFR 825.127)

Next of kin means the nearest blood relative to the covered servicemember, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)

Outpatient status means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

Serious injury or illness means: (29 USC 2611; 29 CFR 825.127)

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.
2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:

- a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered the veteran unable to perform the duties of the employee's office, grade, rank, or rating
- b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition
- c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to the employee's military service or that would do so but for treatment received by the veteran
- d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

An employee requesting leave to care for a covered servicemember with a serious injury or illness shall provide the County Superintendent or designee with certification from an authorized health care provider of the servicemember that contains the information specified in 29 CFR 825.310.

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouse or domestic partners work for the County Education Office and both wish to take such leave, the spouse or domestic partners are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

During the period of military caregiver leave, the County Education Office's rule regarding an employee's use of the employee's accrued vacation leave and other accrued paid or unpaid time off, as specified in the section "Use/Substitution of Paid Leave" above, shall apply.

#### Notifications

The County Superintendent or designee shall provide the following notifications regarding state and federal law related to PDL or FMLA/CFRA leave:

1. General Notice: Information explaining the provisions of the FEHA/PDL and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on County Education Office premises, or electronically, and

shall be included in employee handbooks. (2 CCR 11049, 11095; 29 USC 2619)

The general notice shall also explain an employee's obligation to provide the County Superintendent or designee with at least 30 days notice of the need for the requested leave, when the need is reasonably foreseeable at least 30 days prior to the start of the leave. (2 CCR 11050, 11091)

2. Eligibility Notice: When an employee requests leave, including PDL, or when the County Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the County Superintendent or designee shall, within five business days, provide notification to the employee of the employee's eligibility to take such leave. (2 CCR 11049, 11091; 29 CFR 825.300)
3. Rights and Responsibilities Notice: Each time the eligibility notice is provided to an employee, the County Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as applicable: (29 CFR 825.300)
  - a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying
  - b. The employee's right to use paid leave, whether the County Education Office will require use of paid leave, conditions related to any use of paid leave, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave
  - c. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis
  - d. The employee's status as a "key employee" if applicable, potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial
  - e. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave
  - f. The employee's potential liability for health insurance premiums paid by the County Education Office during the employee's unpaid FMLA leave should the employee not return to service after the leave

Any time the information provided in the above notice changes, the County Superintendent or designee shall, within five business days of receipt of an employee's

first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

4. Designation Notice: When the County Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, County Superintendent or designee shall, within five business days, provide written notification designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (2 CCR 11091; 29 CFR 825.300)

If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

If the County Education Office requires paid leave to be used during an otherwise unpaid family care and medical leave, the notice shall so specify. If the County Education Office requires an employee to present a release to return to work certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (2 CCR 11091, 11097; 29 CFR 825.300)

Any time the information provided in the designation notice changes, the County Superintendent or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

## Records

The County Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law. (Government Code 12946; 29 USC 2616; 42 USC 2000ff-1; 29 CFR 825.500)

## Legal Reference:

### EDUCATION CODE

44965 Granting of leaves of absence for pregnancy and childbirth

### FAMILY CODE

297-297.5 Rights, protections, and benefits under law; registered domestic partners

300 Validity of marriage

GOVERNMENT CODE

12926 Fair employment and housing act, definitions  
12940 Unlawful employment practices  
12945 Pregnancy; childbirth or related medical condition; unlawful practice  
12945.1-12945.2 California Family Rights Act  
12946 Fair Employment and Housing Act: discrimination prohibited

CODE OF REGULATIONS, TITLE 2

11035-11051 Sex discrimination: pregnancy, childbirth and related medical conditions  
11087-11098 California Family Rights Act

UNITED STATES CODE, TITLE 1

7 Definition of marriage

UNITED STATES CODE, TITLE 29

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

UNITED STATES CODE, TITLE 42

2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008

CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 Family and Medical Leave Act of 1993

COURT DECISIONS

United States v. Windsor, (2013) 699 F.3d 169  
Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864  
Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045

Management Resources:

FEDERAL REGISTER

The Family and Medical Leave Act; Final Rule; February 6, 2013. Vol. 78, No. 25, pages 8903-8947

U.S. DEPARTMENT OF LABOR PUBLICATIONS

Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers

WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>  
U.S. Department of Labor, FMLA: <http://www.dol.gov/whd/fmla>

APPROVED BY COUNTY SUPERINTENDENT:  
REVISED: September 15, 2017

April 6, 1995



## PROVISIONS RELATING TO ALL EMPLOYEES

AR 5007.8

### ADMINISTRATIVE REGULATION –PERSONAL ILLNESS/INJURY LEAVE

Classified employees employed five days a 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. However, any part-time employee whose work hours are so few as to entitle the employee to less than 24 hours of paid sick leave per fiscal year shall be granted sick leave pursuant to Labor Code 246, if the employee 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. 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 the employee's duties (Education Code 45199)
2. Pregnancy, miscarriage, childbirth, and related recovery (Education Code 45193)
3. Personal necessity as specified in Education Code 45207
4. Medical or dental appointments, in increments of not less than one quarter of an hour (fifteen minutes)
5. Industrial accident or illness when leave granted specifically for that purpose has been exhausted (Education Code 45192)
6. Need of the employee or the 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)
7. Need of the employee to seek or obtain 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 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 #6-7, an employee may use, in any calendar year, the amount of sick leave the employee would accrue during six months at the employee's current rate of entitlement. (Labor Code 233)

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 the employee has completed six months of active service with the County Education Office. (Education Code 45191)

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

An employee shall reimburse the County Education Office for any unearned sick leave used as of the date of the employee's separation from employment.

The County Education Office shall not require newly employed classified employees to waive leave accumulated in a previous district. However, if the employee's previous employment was terminated for cause, the transfer of the accumulated leave shall be made only if approved by the Governing Board. (Education Code 45202)

The County Superintendent or designee shall notify any classified employee whose employment with the County Education Office is terminated after at least one calendar year for reasons other than for cause that, if the employee accepts employment in another district, county office of education, or community college district within one year of the termination of employment, the employee shall be entitled to request that the County Education Office transfer the employee's accumulated sick leave to the employee's new employer. (Education Code 45202)

#### 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 the employee's 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 the employee works. (Education Code 45191.5)

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 County 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.

## Notification of Absence

An employee shall notify the County Superintendent or the designated manager or supervisor of the employee's 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 County Education Office. If the duration of absence becomes shorter than estimated, the employee shall notify the County Education 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 Education 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

Each year, each regular classified employee shall be credited with no fewer than 100 working days of paid leave for personal illness or accident, including current year and accumulated days of leave. When the current year and accumulated days at full pay are exhausted, the remainder of the 100 days shall be compensated at 50 percent of the employee's regular salary. Any of the 100 days of leave not used during the year in which they are credited shall be forfeited and shall not accumulate from year to year. This paid leave shall be exclusive of any other paid leave, holidays, vacation, or compensatory time to which the employee may be entitled. (Education Code 45196)

## Differential Pay for Parental Leave

During each school year, any classified employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave (baby bonding) pursuant to Government Code 12945.2 shall receive differential pay for 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. Such parental leave shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 and the aggregate amount of parental leave shall not exceed 12 work weeks in a 12-month period. Eligibility for parental leave pursuant to Education Code 45196.1 shall not require 1,250 hours of service with the County Education Office during the previous 12 months. (Education Code 45196.1)

## 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 County 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)



If the employee is still unable to resume the employee's 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 the employee's position, the employee shall be offered reemployment in the first vacancy in the classification of the employee's 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 the employee's seniority. (Education Code 45195)

### Verification Requirements

After any absence due to illness or injury, the employee shall submit a completed and signed County Education Office absence form to the employee's 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.

For absences of five or more consecutive days or apparent intermittent leave for medical purposes, the employee shall submit verification from a physician confirming the need to such leave.

In addition, the County Superintendent or designee may require an employee to visit a physician selected by the County Education Office, at County Education Office 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 County Superintendent or designee may, after giving notice to the employee, deny the request for additional leave.

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

Any genetic information received by the County Education 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 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 the employee's physician stating that the employee is able to return to work and stipulating any

recommended restrictions or limitations.

### Short-Term and Substitute Employees

Except for a retired annuitant who is not reinstated to the retirement system, any short-term or substitute employee who works for 30 or more days within a year of the employee's 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 short-term or substitute employee may begin to use accrued paid sick days on the 90th day of the employee's employment, after which the employee may use the sick days as they are accrued. (Labor Code 246)

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

1. The employee's 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 the employee's 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 short-term or substitute employee, shall be denied the right to use accrued sick days and the County Education 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 the County Education Office violation of Labor Code 245-249.

To ensure the County Education 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 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 the County Education 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

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

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)

APPROVED BY COUNTY SUPERINTENDENT:

September 15, 2017