Information Sheet – 1/19/16 - Board of Trustees Meeting

TO: Board of Trustees Item: 8.2

FR: Celli Coeville and Grace Merritt

RE: First Reading – Policy Revision

Temporary/Substitute Personnel BP 4121
(BP revised)Policy updated to reflect NEW LAW (AB 1522) which requires districts to grant paid sick leave to all employees who work 30 or more days per year, including temporary and substitute employees, unless the district has adopted a collective bargaining agreement that expressly provides paid sick leave for such employees and contains additional specified provisions.

Personal Illness/Injury Leave AR 4161.1/4361.1
(AR revised) Mandated regulation updated to reflect NEW LAW (AB 1522) which requires districts to grant paid sick leave to all employees who work 30 or more days per year, unless the district's collective bargaining agreement contains specified provisions. Regulation also reflects provisions of AB 1522 which expand the allowable uses of sick leave to include (1) diagnosis, care, or treatment of an existing health condition, or preventive care, for an employee or his/her family member (defined to include registered domestic partner and sibling) and (2) the need of an employee who has been the victim of domestic violence, sexual assault, or stalking to seek any relief or medical attention for himself/herself or his/her child.

Personal Leaves AR 4161.2/4261.2/4361.2
(AR revised) Mandated regulation updated to reflect NEW LAW (AB 1522) which requires districts to allow an employee who has been the victim of domestic violence, sexual assault, or stalking to use sick leave to seek any relief or medical attention for himself/herself or his/her child. Section on "Leaves for Victims of Domestic Violence and Sexual Assault," which prohibits adverse employment action against employees taking leave who are victims of domestic violence and sexual assault, expanded to include employees who are victims of stalking. Section on "Leave for Emergency Duty" updated to reflect law allowing employees who are reserve peace officers and emergency rescue personnel to take up to 14 days of leave per calendar year to receive training.

Personal Illness/Injury Leave AR 4261.1
(AR revised) Mandated regulation updated to reflect NEW LAW (AB 1522) which requires districts to grant paid sick leave to all employees who work 30 or more days per year and expands purposes for sick leave, as described above for BP 4121 - Temporary/Substitute Personnel and AR 4161.1/4361.1 - Personal Illness/Injury Leave.

Temporary/Substitute Personnel

The Governing Board recognizes that substitute and temporary personnel perform an essential role in promoting student achievement and desires to employ highly qualified, appropriately credentialed employees to fill such positions.

(cf. 4112.2 - Certification)

Hiring

The Superintendent or designee shall recommend candidates for substitute or temporary positions for Board approval, and shall ensure that all substitute and temporary employees are assigned in accordance with law and the authorizations specified in their credential.

(cf. 4113 - Assignment)

Substitute personnel may be employed on an on-call, day-to-day basis.

In addition, after September 1 of any school year, the Board may employ substitute personnel for the remainder of the school year for positions for which no regular employee is available. The district shall first demonstrate to the Commission on Teacher Credentialing the inability to acquire the services of a qualified regular employee. (Education Code 44917)

(cf. 4117.14/4317.14 - Postretirement Employment)

***Note: Education Code 44956 and 44957 require that districts give employees who are laid off pursuant to Education Code 44955 priority for substitute service during the period of preferred right to reemployment. The period of preferred right to reemployment is 39 months for laid-off permanent employees and 24 months for probationary employees; see BP 4117.3 - Personnel Reduction. ***

***Note: Pursuant to Education Code 44956, if a laid-off permanent employee serves as a substitute in any position requiring certification for any 21 days or more within a period of 60 school days, he/she is entitled to compensation not less than the amount the employee would receive if he/she were being reappointed and retroactive to the first day of the substitute service. Education Code 44957 does not contain similar provisions for probationary employees; such employees are paid according to the salary schedule for substitute employees adopted by the Governing Board, regardless of the number of days worked as a substitute. ***

Permanent or probationary certificated employees who were laid off pursuant to Education Code 44955 and who have a preferred right of reappointment shall be given priority for substitute service in the order of their original employment. (Education Code 44956, 44957)

(cf. 4117.3 - Personnel Reduction)

TEMPORARY/SUBSTITUTE PERSONNEL (continued)

Classification

***Note: A certificated employee's classification as a substitute, temporary, probationary, or permanent employee governs the statutory job protections to which he/she is entitled and the procedures that apply if he/she is not reelected; see section below entitled "Release from Employment/Dismissal." Districts are encouraged to consult legal counsel when questions arise regarding such classification. ***

At the time of initial employment and each July thereafter, the Board shall classify substitute and temporary employees as such. (Education Code 44915, 44916)

The Board may classify as substitute personnel a teacher hired to fill the position of a regularly employed person who is absent from service. (Education Code 44917)

***Note: The following two paragraphs describe circumstances under which the Education Code expressly defines a position as temporary. In both Bakersfield Elementary Teachers Association v. Bakersfield City School District and California Teachers Association v. Vallejo City Unified School District, the courts determined that it was inappropriate to classify certificated employees as temporary on the basis of the provisional status of their credential (i.e., those serving under an intern credential, provisional internship permit, short-term staff permit, emergency teaching permit, or credential waiver). According to the courts, districts may classify as temporary employees only those persons who are specified to be temporary employees in the Education Code. All other certificated employees who cannot be properly classified as substitute or permanent employees must be classified as probationary employees. ***

***Note: One circumstance under which a teacher may be classified as a temporary employee is when the district needs an additional teacher for a period of one semester to one year because of teacher absence due to leaves or long-term illness, as authorized in Education Code 44920. As provided below, Education Code 44920 requires the Board to determine the number of temporary employees that may be hired under these circumstances. In McIntyre v. Sonoma Valley Unified School District, the court clarified that a district's ability to classify an employee as temporary pursuant to Education Code 44920 is not dependent upon a one-to-one match of temporary employees to employees on leave. Rather, all that is required is that the number of temporary teachers not exceed the total number of employees on leave at any one time. ***

~~The Board may classify as a temporary employee a teacher who is employed for at least one semester and up to one complete school year based on the need for additional certificated employees when regular employees are absent due to leaves or long-term illnesses.~~

To address the need for additional certificated employees when regular district employees are absent due to leaves or long-term illness, the Board may classify a teacher who is employed for at least one semester and up to one complete school year as a temporary employee. ~~.~~ Any person whose service begins in the second semester and before March 15 may be classified as a temporary employee even if employed for less than a semester. The

TEMPORARY/SUBSTITUTE PERSONNEL (continued)

Board shall determine the number of persons who shall be so employed, which shall not exceed the identified need based on the absence of regular employees. (Education Code 44920)

The Board also shall classify as temporary employees those certificated persons, other than substitute employees, who are employed to:

1. Serve from day-to-day during the first three months of any school term to teach temporary classes which shall not exist after that time, or perform any other duties which do not last longer than the first three months of any school term (Education Code 44919)

2. Teach in special day and evening classes for adults or in schools of migratory population for not more than four months of any school term (Education Code 44919)

(cf. 6175 - Migrant Education Program)
(cf. 6200 - Adult Education)

3. Serve in a limited assignment supervising student athletic activities provided such assignments have first been made available to teachers presently employed in the district (Education Code 44919)

(cf. 4127/4227/4327 - Temporary Athletic Team Coaches)

4. Serve in a position for a period not to exceed 20 working days in order to prevent the stoppage of district business during an emergency when persons are not immediately available for probationary classification (Education Code 44919)

For purposes of classifying employees pursuant to item #1 or #2 above, the school year shall not be divided into more than two school terms. (Education Code 44919)

***Note: Education Code 44909 authorizes districts to employ certificated employees in programs and projects conducted under contract with public or private agencies or through categorically funded projects which are not required by federal or state statutes, and provides that such persons may be employed for periods less than a full school year. Pursuant to Education Code 44909, such persons may be terminated at the expiration of the contract or specially funded project without regard to termination procedures required for probationary or permanent employees. In Stockton Teachers Association v. Stockton Unified School District, the court of appeals clarified that "the expiration of the contract" refers to the contract between the district and the agency providing categorical funds, not a contract between the district and employee. Thus, the district may not hire a person for more or less than the term of the contract or project and treat such a person as a temporary employee. Districts should consult legal counsel as necessary regarding the classification or termination of employees hired pursuant to Education Code 44909. Also, it is recommended that districts use a separate employment agreement tailored to these employees. ***

TEMPORARY/SUBSTITUTE PERSONNEL (continued)

Any employee hired to provide services in a categorically funded program or project may be employed for a period less than a full school year. He/she may be classified as a temporary employee if the period of employment will end at the expiration of that program or project. (Education Code 44909)

Salary and Benefits

The Board shall adopt and make public a salary schedule setting the daily or pay period rate(s) for substitute employees for all categories or classes of certificated employees of the district. (Education Code 44977, 45030)

***Note: Pursuant to Government Code 3540.1, exclusive representatives of employees for purposes of negotiations may include representation of all public school employees other than management and confidential employees, as defined. Thus, substitute and temporary personnel may have the right to be represented. In cases where substitute and temporary employees are not represented, the Board may determine whether to include such employees in the district's health and welfare plan and other benefits. Although Options 1 and 2 below address temporary employees only, a district may modify either option as necessary to reflect its treatment of substitute employees. The district should consult legal counsel if it has any questions about the provision of benefits to substitute and temporary employees. ***

Temporary employees shall participate in the health and welfare plans or other fringe benefits of the district.

(cf. 4140/4240/4340 - Bargaining Units)
(cf. 4154/4254/4354 - Health and Welfare Benefits)

Paid Sick Leave

***Note: Effective July 1, 2015, Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including temporary and substitute employees. In implementing Labor Code 246, the district must either (1) allow temporary and substitute employees to carry over accrued paid sick leave to the following year up to a maximum of 48 hours or six work days, in which case the district must track the amount of sick leave earned by each employee, or (2) grant 24 hours of paid sick leave to each such employee at the beginning of each year, in which case no sick leave carries over to the following year. Districts should select the option below which corresponds to their approach under Labor Code 246. ***

***Note: Additional requirements of Labor Code 245-249 include, but are not limited to, display of a poster containing specified information at every workplace, provision of each employee's sick leave balance on his/her wage statements, and maintenance of leave usage documentation for three years. The provisions of Labor Code 245-249 are very broad and

only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all the conditions for this exemption, the following optional section has been drafted to include the requirements of Labor Code 245-249. Any district whose collective bargaining agreement meets all the conditions for exemption may modify this section accordingly. For sick leave for full-time and part-time certificated employees and additional requirements of Labor Code 245-249, see AR 4161.1/4361.1 - Personal Illness/Injury Leave. For sick leave for classified employees, see AR 4261.1 - Personal Illness/Injury Leave. ***

Any temporary or substitute employee who works for 30 or more days within a year of his/her employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Such employee may begin to use accrued paid sick days on the 90th day of his/her employment, after which he/she may use the sick days as they are accrued. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

***Note: The following paragraph applies to both options and reflects the intent of the legislature in enacting the Healthy Workplaces, Healthy Families Act, including to enable California workers to address their own and their family's health needs and to provide them with economic security when they need to take time off work for reasons of domestic violence, sexual assault, or stalking. The following paragraph may be revised to include additional reasons for which temporary or substitute employees may use sick leave, pursuant to district policy or practice. ***

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

1. The diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5

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 his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against any employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249. The Superintendent or designee shall display a poster containing required information, provide notice to eligible employees of their sick leave rights, keep of records of employees' use of sick leave for three years, and comply with other requirements specified in

Labor Code 245-249 and in AR 4161.1/4361.1 - Personal Illness/Injury Leave. ~~Substitute and temporary employees shall not participate in the health and welfare plans or other fringe benefits of the district.~~

Release from Employment/Dismissal

The Board may dismiss a substitute employee at any time at its discretion. (Education Code 44953)

The Board may release a temporary employee at its discretion if the employee has served less than 75 percent of the number of days the regular schools of the district are maintained during one school year.~~.~~ After serving 75 percent of the number of days that district schools are maintained during one school year, a temporary employee may be released as long as he/she is notified, before the last day of June, of the district's decision not to reelect him/her for the following school year. (Education Code 37200, 44954)

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

Reemployment as a Probationary Employee

***Note: Education Code 44917, 44918, and 44920 provide that a substitute or temporary employee who performs the duties of a certificated employee for a complete school year, or for at least 75 percent of the days in the school year, shall be given credit for a complete year as a probationary employee if he/she is then employed as a probationary employee the following school year, as provided below. However, in McIntyre v. Sonoma Valley Unified School District, the court clarified that a district is not required to grant probationary status to an employee based solely on the fact that he/she served as a temporary employee for more than one year if the employee is released and reemployed as a temporary employee for the following year to fill the position of a regularly employed person absent from service. ***

***Note: Reemployment provisions contained in Education Code 44918 do not apply to districts with average daily attendance of over 400,000; such districts should modify the following section accordingly. ***

Unless released from employment pursuant to Education Code 44954, any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified as a probationary employee. With the exception of on-call, day-to-day substitutes, if a temporary or substitute employee performs the duties normally required of certificated employees for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and is then employed as a probationary employee for the following school year, his/her previous employment as a temporary or substitute employee shall be credited as one year's employment as a probationary employee for purposes of acquiring permanent status. (Education Code 44917, 44918, 44920)

(cf. 4116 - Probationary/Permanent Status)

Vacant position means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. ~~-~~It shall not include a position which would be filled by a permanent or probationary employee except for the fact that such

employee is on leave. (Education Code 44920, 44921)

A temporary employee hired pursuant to item #1 or #2 in the section "Classification" above shall be classified as a probationary employee if the duties continue beyond the time limits of the assignment. (Education Code 44919)

***Note: Districts that do not maintain high schools should delete the following paragraph. ***

~~A person employed pursuant to item #5 in the section "Classification" above who is then continued in employment beyond the first semester shall be classified as a probationary employee for the entire school year and shall be reemployed to fill any vacant positions in the district for which he/she is certified. Preference for available positions shall be determined by the Board as prescribed by Education Code 44845 and 44846. (Education Code 44921)~~

With the exception of on-call, day-to-day substitutes, any~~a~~ temporary or substitute employee who was released pursuant to Education Code 44954 but who has nevertheless served in a certificated position in the district~~for two consecutive school years,~~ for at least 75 percent of each of two consecutive school years~~year,~~ shall receive first priority if the district fills a vacant position for the subsequent school year at the grade level at which the employee served during either year. In the case of a departmentalized program, the employee shall have taught the subject matter in which the vacant position occurs. (Education Code 44918)

Legal Reference:

EDUCATION CODE

22455.5 Provision of retirement plan information to potential members
22515 Irrevocable election to join retirement plan
37200 School calendar
44252.5 State basic skills assessment required for certificated personnel
44300 Emergency teaching or specialist permits
44830 Employment of certificated persons; requirements of proficiency in basic skills
44839.5 Employment of retirant
44845 Date of employment
44846 Criteria for reemployment preferences
44909 Employees providing services through categorically funded programs
44914 Substitute and probationary employment computation for classification as permanent employee
44915 Classification of probationary employees
44916 Time of classification; statement of employment status
44917 Classification of substitute employees
44918 Substitute or temporary employee deemed probationary employee; reemployment rights
44919 Classification of temporary employees
44920 Employment of certain temporary employees; classifications
44921 Employment of temporary employees; reemployment rights (unified and high school districts)
44953 Dismissal of substitute employees
44954 Release of temporary employees
44955 Layoff of permanent and probationary employees

44956 Rights of laid-off permanent employees to substitute positions
44957 Rights of laid-off probationary employees to substitute positions
44977 Salary schedule for substitute employees
45030 Substitutes
45041 Computation of salary
45042 Alternative method of computation for less than one school year
45043 Compensation for employment beginning in the second semester

56060-56063 Substitute teachers in special education
GOVERNMENT CODE
3540.1 Educational Employment Relations Act, definitions
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
5502 Filing of notice of physical examination for employment of retired person
5503 Physical examination for employment of retired persons
5590 Temporary athletic team coach
80025-80025.5 Emergency substitute teaching permits
COURT DECISIONS
McIntyre v. Sonoma Valley Unified School District (2012) 206 Cal.App.4th 170
Stockton Teachers Association CTA/NEA v. Stockton Unified School District (2012) 204 Cal.App.4th 446
Neily v. Manhattan Beach Unified School District, (2011) 192 Cal.App.4th 187
California Teachers Association v. Vallejo City Unified School District, (2007) 149 Cal.App.4th 135
Bakersfield Elementary Teachers Assn. v. Bakersfield City School District, (2006) 145 Cal.App.4th 1260, 1277
Kavanaugh v. West Sonoma Union High School District, (2003) 29 Cal.4th 911

Management Resources:
WEB SITES
CSBA: http://www.csba.org
Commission on Teacher Credentialing: http://www.ctc.ca.gov

(7/12) 12/14

Policy **JEFFERSON SCHOOL DISTRICT**
adopted: February 12, 2013 Tracy, California

PERSONAL ILLNESS/INJURY LEAVE

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

***Note: Effective July 1, 2015, Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including temporary and substitute employees. Additional requirements of Labor Code 245-249 include, but are not limited to, display of a poster containing specified information at every workplace, provision of each employee's sick leave balance on his/her wage statements, and maintenance of leave usage documentation for three years. The provisions of Labor Code 245-249 are very broad and only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all the conditions for this exemption, this administrative regulation has been drafted to include the requirements of Labor Code 245-249. Any district whose collective bargaining agreement meets all the conditions for exemption may modify this administrative regulation accordingly. ***

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

~~Full time~~ certificated employees working five school days per week are entitled to 10 days leave of absence for personal illness or injury (sick leave) per school year, with full pay. Employees working less than five school days per week (part-time employees) shall be granted ~~comparable~~ 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 due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246. (Education Code 44978)

(cf. 4161/4261/4361 - Leaves)
(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Certificated employees may use sick leave for absences due to:

1. Temporary inability to perform assigned duties because of illness, accident, or quarantine, whether or not the cause of the absence arises out of and in the course of employment (Education Code 44964)
~~(cf. *4361 - Leaves*)~~

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

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

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

3. Personal necessity (Education Code 44981)

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

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

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

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

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

***Note: Pursuant to Labor Code 233, any employer who provides sick leave for employees must permit them to use sick leave in any calendar year to attend to the illness of their child, parent, spouse, domestic partner, or domestic partner's child, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement (e.g., five days accrued during six months for full-time certificated employees, unless the district has established an amount that is higher than the legal minimum). Certificated employees also may use sick leave for personal necessity, including the serious illness of a member of the employee's immediate family pursuant to Education Code 44981; see AR 4161.2/4261.2/4361.2 - Personal Leaves. Districts are cautioned to consult legal counsel regarding possible interaction of sick leave and personal necessity leave provisions in the Education Code and Labor Code. ***

6. Illness of the employee's child, parent, spouse, domestic partner, or domestic partner's child for up to the amount of sick leave that would be accrued by the employee during six months at his/her then current rate of entitlement (Labor Code 233)

PERSONAL ILLNESS/INJURY LEAVE (continued)

***Note: Pursuant to Labor Code 246.5, as added by AB 1522 (Ch. 317, Statutes of 2014), paid sick leave may also be used for the purposes specified in items #7 and #8 below. Labor Code 245.5, as added by AB 1522, defines "family member" for the purpose of item #7 to include a registered domestic partner, grandparent, and sibling. Item #8 applies only to employees who are victims of domestic violence, sexual assault, or stalking. For additional information about leaves for victims of domestic violence, sexual assault, or stalking, see AR 4161.2/4261.2/4361.2 - Personal Leaves. ***

7. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5 (Labor Code 246.5)

8. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 246.5)

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

***Note: The following paragraph is optional. ***

An employee ~~who does not complete a given year of service~~ shall ~~be charged~~reimburse the district for any unearned sick leave used as of the date of his/her termination.

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

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

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

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

***Note: Pursuant to Education Code 44979-44980, a certificated employee is entitled to have his/her accumulated sick leave transferred with him/her in the circumstances specified in the following optional paragraph. ***

PERSONAL ILLNESS/INJURY LEAVE (continued)

The Superintendent or designee shall notify any certificated employee who leaves the district after at least one school year of employment ~~and~~that if the employee accepts a certificated position in another district, county office of education, or community college district within one year~~ shall have transferred with him/her the total amount of accumulated sick leave. The district~~ , he/she may ~~not require new employees to waive their leave~~ request that the district transfer his/her accumulated ~~in a previous district. (Education Code 44979, 44980)~~ sick leave ~~may be used by certificated employees for:~~

~~1. Cases of temporary inability~~ to ~~perform duties because of illness, accident or quarantine, whether or not the cause of absence arises out of and in~~ the ~~course of employment (Education Code 44964)~~

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

~~2. Absences due to pregnancy, miscarriage, childbirth and recovery~~new employer. (Education Code ~~44965, 44978)~~ 44979, 44980)

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

~~3. Cases of personal necessity (Education Code 44981)~~

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

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

~~5. Cases of industrial accidents or illnesses when leave granted specifically for that purpose has expired (Education Code 44984)~~

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

~~6. Illness of the employee's child, parent or spouse, up to the amount of sick leave that would be accrued during six months (Labor Code 233)~~

Notification of Absence

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

An employee shall notify the district of his/her need to be absent as soon as such need is known, so that substitute services may be secured. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than ~~3 p.m.~~three o'clock in the afternoon of the day preceding the

day on which he/she intends to return to work. If ~~failure~~the employee fails to ~~so~~ notify the district and the failure results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

(cf. 4121 - Temporary/Substitute Personnel)

Continued Absence After Available Sick Leave ~~Beyond 10 Days~~Is Exhausted/Differential Pay

***Note: Pursuant to Education Code 44977, an employee who is absent for up to five months after exhausting all his/her available sick leave must receive his/her regular salary minus the cost of a substitute. Option 1 below reflects this requirement. ***

***Note: However, Education Code 44983 provides that Education Code 44977 does not apply to those districts that adopt a rule that gives certificated employees 50 percent or more of their regular salary during the period of absence. Option 2 below is for use by districts that choose to specify such a level of compensation; these districts are mandated to adopt a rule to this effect. ***

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

~~The sick leave, including accumulated sick leave, and the five-month period shall run consecutively. (Education Code 44977)~~

***Note: In Veguez v. Long Beach Unified School District, the court held that an employee is not entitled to more than a total of five months of differential pay "per illness or accident," even if the employee works for a period of time between sick leave increments related to the same medical condition. ***

An employee shall not be provided more than one five-month period per illness or ~~accident.~~ injury. 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)

If a certificated employee is not medically able to resume his/her 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. ~~If the employee is on probationary status, he/she shall be placed~~Placement on the reemployment list shall be for 24 months ~~beginning~~for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period ~~provided pursuant to Education Code 44977; if on permanent status, the employee shall be placed on the reemployment list for 39 months.~~ . If during this time the employee becomes medically able, he/she shall be returned to employment in a position for which he/she is

credentialed and qualified. (Education Code 44978.1)

(cf. 4116 - Probationary/Permanent Status)

***Note: When an employee is absent for a period of more than five months, or is absent for a cause other than illness, Education Code 44977 and 44983 provide that the amount deducted from his/her salary shall be determined according to the rules and regulations adopted by the Board as long as such rules are not in conflict with State Board of Education regulations. If not covered in the district's negotiated agreement, the district may add provisions here reflecting salary deductions for employees absent longer than five months. ***

Verification Requirements

***Note: Education Code 44978 mandates the Board to adopt regulations requiring proof of illness or injury and prescribing the means of verification. However, Education Code 44978 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. For verification requirements for employees on leave pursuant to the Family and Medical Leave Act, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. ***

***Note: The following section should be modified to reflect district practice and any procedures which have been specified in negotiated agreements. ***

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

The Superintendent or designee may, at any time, require additional written verification by the employee's physician or ~~practitioner.~~other authorized health care provider. Such verification ~~shall~~ may be required after 4 or more consecutive days whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays and staff development days or whenever ~~clear~~ available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the Superintendent or designee may require an employee to visit a physician selected by the district ~~and~~, at district expense, in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for further leave of absence and a prognosis ~~for~~as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, deny further leave.

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

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

Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and shall not be disclosed except in accordance with 29 CFR 1635.9.

Before returning to work, an employee who has been absent for surgery, hospitalization, or extended medical treatment may be asked to submit a letter from his/her physician stating that he/she is able to return to duty and stipulating any ~~recommended~~necessary restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)
(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Healthy Workplaces, Healthy Families Act Requirements

***Note: Pursuant to Labor Code 245-249, as added by AB 1522 (Ch. 317, Statutes of 2014), all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act could result in enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this new law should consult its legal counsel. ***

No employee shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249.

To ensure the district's compliance with Labor Code 245-249, the Superintendent or designee shall:

1. At a conspicuous location in each workplace, display a poster on paid sick leave that includes the following information:

a. That an employee is entitled to accrue, request, and use paid sick days

b. The 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 or using sick leave is prohibited by law and an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against him/her

2. Provide at least 24 hours or three days of paid sick leave to each eligible employee to use

per year and allow eligible employees to use accrued sick leave upon reasonable request

3. Provide eligible employees written notice, on their pay stub or other document issued with their pay check, of the amount of paid sick leave they have available

(cf.
~~*Legal References: (see next page)*~~

4112.9/4212.9/4312.9 - Employee Notifications)

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

Legal Reference:
EDUCATION CODE
44964 Power to grant leave of absence in case of illness, accident, or quarantine
44965 Granting of leaves of absence for pregnancy and childbirth
44976 Transfer of leave rights when school is transferred to another district
44977 Salary deduction during absence from duties up to five months after sick leave is exhausted
44978 Provisions for sick leave of certificated employees
44978.1 Inability to return to duty; placement in another position or on reemployment list
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 ~~or~~, 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

Regulation
approved: March 9, 2002

JEFFERSON SCHOOL DISTRICT
Tracy, California

***Note: The following administrative regulation is subject to collective bargaining agreements. ***

***Note: As provided in the following paragraph, Family Code 297.5 extends to registered domestic partners the same rights that are available under state law to spouses. Thus, pursuant to Family Code 297.5, any reference to an employee's spouse throughout the following regulation also applies to a registered domestic partner, even if not expressly stated in the applicable state codes (e.g., Education Code, Military and Veterans Code). Districts should consult legal counsel if a question arises as to leave provisions relative to an employee's domestic partner. ***

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 ~~or instructions~~as applicable, for a substitute employee.

(cf. 4121 - Temporary/Substitute Personnel)

Bereavement

***Note: Education Code 44985 and 45194 allow the Governing Board to expand the class of relatives listed below and enlarge the benefits provided by law. The following two paragraphs may be revised to reflect district practice. ***

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

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

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

1. The mother, father, step father, step mother; step children, step grandparents, step brother, step sister; grandmother, grandfather, or grandchild ~~of the employee or of the employee's spouse;~~ brother, sister, son, daughter; brother-in-law, sister-in-law, son-in-law, daughter-in-law; aunt, uncle, niece or nephew; ~~the employee's~~ spouse or registered domestic partner, ~~or~~ any relative living in the ~~employee's~~ immediate household of the employee. ~~(Education Code 44985, 45194)~~
~~At his/her discretion, the Superintendent or designee may grant additional unpaid bereavement leave.~~

PERSONAL LEAVES (continued)

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

***Note: Employees may use a maximum of seven days of accumulated personal illness/injury leave (sick leave) for reasons of personal necessity pursuant to Education Code 44981 (certificated employees) and 45207 (classified employees). Pursuant to Education Code 44981 and 45207, a higher maximum may be set for certificated and classified employees in their collective bargaining agreement or by Board resolution for classified employees who are not covered by a collective bargaining agreement. Districts that have established a maximum that is higher than seven days should modify the following paragraph accordingly. ***

***Note: Education Code 45207 clarifies that provisions pertaining to personal necessity leave also apply to districts that have adopted the merit system for classified employees in accordance with Education Code 45240-45320. ***

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

(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Acceptable reasons for the use of personal necessity leave include:

1. Death of a member of the employee's immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)

2. An accident involving the employee's person or property or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)

***Note: Education Code 44981 provides that a certificated employee may use personal necessity leave for the serious illness of a member of his/her immediate family. The Board may extend these provisions to classified employees under the authority granted to the Board by Education Code 45207. Districts are cautioned to consult legal counsel regarding any interaction of Education Code provisions with Labor Code 233, which states that any

PERSONAL LEAVES (continued)

employer who provides sick leave for employees must permit the employees to use one-half of their annual sick leave allotment to attend to the illness of a child, parent, spouse, registered domestic partner, or registered domestic partner's child. See AR 4161.1/4361.1 - Personal Illness/Injury Leave and AR 4261.1 - Personal Illness/Injury Leave. Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for federal and state provisions related to leaves for the birth, adoption, or foster placement of a new child; the care of a seriously ill child, parent, or spouse/registered domestic partner; or the employee's own serious health condition. ***

3. A serious illness of a member of the certificated employee's immediate family (Education Code 44981)

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

***Note: Education Code 45207 provides that classified employees may use sick leave for required court appearances, as provided in item #4. below. Circumstances under which employees may take time off, with pay, for court appearances are described in the section on "Legal Duties" below. ***

4. A classified employee's appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or other order (Education Code 45207)

***Note: Items #5 and #6 are optional and may be deleted or modified to reflect district practice. ***

5. Fire, flood, or other immediate danger to the home of the employee

6. Personal business of a serious nature which the employee cannot disregard

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, no suchpersonal necessity leave shall not be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent or designee shall have final discretion as to whether or not a request reflects true personal necessity.

***Note: Education Code 44981 and 45207 specify circumstances under which certificated and classified employees cannot be required to seek advance permission for the leave. However, only certificated employees are afforded the right, pursuant to Education Code 44981, to not be required to provide advance notice for leave due to a serious illness of the employee's family member. Districts may, at their discretion, extend this right to all employees as stated in the following optional paragraph. Districts that wish to restrict the provision to certificated employees should revise the paragraph accordingly. ***

PERSONAL LEAVES (continued)

***Note: Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for requirements pertaining to requests for leaves that qualify under the federal Family and Medical Leave Act (29 USC 2601-2654) or the California Family Rights Act (Government Code 12945.1-12945.2), including provisions that allow employees to provide notice as soon as practicable when 30-day advance notice is not practicable due to lack of knowledge of the date the leave will be needed, a change in circumstances, or a medical emergency. ***

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

However, the employee shall notify the Superintendent or designee of the need for the leave as soon as practicable.

***Note: Education Code 44981 and 45207 mandate the adoption of regulations requiring, and prescribing the manner of, proof of personal necessity. The following paragraph may be revised to specify the manner of proof required by the district. ***

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

Legal Duties

~~Classified~~***Note: Pursuant to Education Code 44037, it is unlawful for the district or personnel commission to (1) adopt any rule, regulation, or policy that encourages employees to seek exemption from jury duty; (2) directly or indirectly solicit or suggest to any employee that he/she seek exemption from jury duty; or (3) discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of his/her service on a jury panel. However, the Board or personnel commission may establish a rule providing that only a percentage of district staff, which shall not be less than two percent, shall be granted such leave with pay at any one time. The following section may be revised to reflect district practice. ***

***Note: Labor Code 230 prohibits the discharge of or discrimination or retaliation against an employee for taking time off for the activities specified in items #1-2 below. ***

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

1. Serve on an inquest jury or trial jury

PERSONAL LEAVES (continued)

2. Comply with a subpoena or other court order to appear as a witness

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

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

***Note: The following optional paragraph is for use by districts that choose to provide leave of absence with pay for certificated employees called for jury duty, as authorized by Education Code 44036. Districts that do not grant such leave should delete this paragraph. ***

A certificated employee also shall be granted leave for jury duty with pay up to the amount of the difference between ~~the employee's~~his/her regular earnings and any amount received ~~as juror's~~for jury fees.

***Note: Education Code 44036 allows the Board, at its discretion, to provide paid leaves for employees to appear as witnesses in court other than as litigants or to respond to orders from another governmental jurisdiction. The following paragraph is optional. Districts that do not grant such leave should delete this paragraph. ***

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

Leaves for Crime Victims

***Note: Labor Code 230.2 prohibits a district from taking adverse employment action against an employee who takes leave as described below. ***

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

1. A violent felony as defined in Penal Code 667.5(c)

2. A serious felony as defined in Penal Code 1192.7(c)

3. A felony provision of law proscribing theft or embezzlement

***Note: Pursuant to Labor Code 230.2, employees may use any of the types of leave listed in the following paragraph, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of an employee. ***

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

Prior to taking time off

~~1. Serve on an inquest jury or trial jury~~

~~2. Comply with a subpoena or other court order to appear as a witness, including but not limited to cases in which the employee is a victim of a crime~~

~~3~~, an employee shall give his/her supervisor a copy of the notice of each scheduled proceeding that is provided by the responsible agency, unless advance notice is not feasible. When advance notice is not feasible or an unscheduled absence occurs, the employee shall, within a reasonable time after the absence, provide documentation evidencing the judicial proceeding from the court or government agency setting the hearing, the district attorney or prosecuting attorney's office, or the victim/witness office that is advocating on behalf of the victim. (Labor Code 230.2)

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

Leaves for Victims of Domestic Violence, Sexual Assault and Stalking

***Note: Pursuant to Labor Code 230 and 230.1, as amended by SB 400 (Ch. 759, Statutes of 2013), the prohibition of adverse employment action against employees who are victims of domestic violence and sexual assault for taking leaves described in the following section is also applicable to victims of stalking. As amended, Labor Code 230 and 230.1 allow employees to use their available vacation, personal leave, or compensatory time off for this purpose, unless otherwise provided by applicable collective bargaining agreement. However, a collective bargaining agreement cannot diminish the entitlement of an employee. ***

***Note: Labor Code 246.5 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), requires the district to allow the use of sick leave by any employee who is a victim of domestic violence, sexual assault, or stalking for the purpose of seeking or obtaining any relief or medical attention to ensure the employee's or his/her child's health, safety, and welfare, as specified below. ***

An employee who is a victim of domestic violence, sexual assault, or stalking as defined by law may use vacation, sick leave, personal leave, or compensatory time off that is otherwise

available to him/her under the terms of his/her employment to attend to the following activities: (Labor Code 230, 230.1, 246.5)

1. Obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety or welfare of the employee or his/her child when the employee is a victim of domestic violence

,

Prior to taking time off for a court appearance, an employee shall give reasonable notice to his/her supervisor unless an unscheduled or emergency court appearance is required for the health, safety or welfare of anthe employee who is a domestic violence victim or his/her child.

***Note: Labor Code 230.1, as amended by SB 400 (Ch. 759, Statutes of 2013), requires a district with 25 or more employees to grant time off to an employee who is a victim of sexual assault, domestic violence, or stalking for the following additional reasons. A district with fewer than 25 employees may use or delete items #2-5 below at its discretion. ***

2. Seek medical attention for injuries caused by domestic violence, sexual assault, or stalking

3. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking

4. Obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking

5. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation

Prior to taking time off, an employee shall give reasonable notice to his/her supervisor, unless advance notice is not feasible. When an unscheduled or emergency court appearance is requiredabsence occurs, the employee shall provide, within a reasonable period of time after, certification of the appearance,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 he/shethe employee has appeared in court. (Labor Code 230)

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

***Note: Pursuant to Labor Code 230, as amended by SB 400 (Ch. 759, Statutes of 2013), the list of professionals authorized to issue documentation to certify an employee's need for leaves within this section has been modified as specified in item #3 below. ***

3. Documentation from a domestic violence or sexual assault counselor as defined in

Evidence Code 1037.1 or 1035.2, licensed medical professional or health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking

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

Personal Leave for a Child's School Activities

***Note: Pursuant to Labor Code 230.8, the following section applies to any district employing 25 or more employees at the same location. A district with fewer than 25 employees at the same location may use or delete this section at its discretion. ***

***Note: Pursuant to Labor Code 230.8, an employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated against for using the leave is entitled to reinstatement and reimbursement for lost wages and benefits, and an employer who willfully refuses to rehire, promote, or otherwise reinstate such an employee is subject to a civil penalty equal to three times the amount of the lost wages and benefits. ***

Any employee who is a parent~~,~~/guardian or grandparent having custody of one or more children ~~who are~~ enrolled in grades K-12~~,~~ or who attend a licensed day care facility~~,~~ may use up to 40 hours of personal leave, vacation, or compensatory time off each school year in order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the ~~school~~ year~~, and~~. The employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

***Note: Labor Code 230.8 provides that the employee may use time off without pay to the extent the district makes it available. The following optional paragraph may be revised to reflect district practice. ***

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

~~*(cf. 1240 - Volunteer Assistance)*~~

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

~~The employee shall use existing vacation, personal leave or compensatory time off for purposes of this leave.~~ (Labor Code 230.8)

~~In lieu of using vacation, personal leave or compensatory time off, eligible employees giving reasonable advanced notice may take up to 40 hours without pay each school year for this purpose, not to exceed eight hours in any month.~~

Upon request by the Superintendent or designee, the employee shall provide documentation from the school or licensed day care facility ~~to prove~~ that he/she participated in school or licensed day care facility activities on a specific date and at ~~the~~a particular time ~~of the leave.~~.

(Labor Code 230.8)

~~**Civic Duties**~~
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 ~~boards, commissions, committees~~education board, commission, committee, or ~~groups~~group authorized by Education Code 44987.3~~,~~ provided that all of the following conditions are met: (Education Code 44987.3)

1. The service is ~~in~~performed within the state~~ of California, the~~.

2. The board, commission, organization, or group informs the district in writing of the service~~ and the~~.

3. The board, commission, organization~~ reimburses~~, or group agrees, prior to the service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.~~ (Education Code 44987.3)~~

Religious Leave

~~Employees~~***Note: The following optional section is for use by any district that chooses to grant religious leave and may ~~take~~be revised to reflect district practice. A district that does not grant such leave should delete this section. However, the district should consult legal counsel before denying a request for religious leave since the Constitution requires districts to provide "reasonable accommodation" to employee religious practices. ***

The Superintendent or designee may grant an employee up to three days of leave per year for religious purposes, ~~as long as such leaves do~~provided that the leave is requested in advance and that it does not cause additional district expenditures, the neglect of assigned duties, or any other unreasonable hardship on the district.~~ The Superintendent or designee may grant such leave provided that it is requested in advance.~~

***Note: The following optional paragraph reflects the California Supreme Court's interpretation of Article 1, Section 8 of the California Constitution as stated in Rankin v. Commission on Professional Competence. ***

The Superintendent or designee shall deduct the cost of hiring a substitute, when required, from the wages of the employee who takes religious leave.

No employee shall be discriminated against for using this leave or any additional days of unpaid leave granted for religious observances at the discretion of the Superintendent or designee.

Spouse on Leave from Military Deployment

***Note: Military and Veterans Code 395.10 requires any district with 25 or more employees to allow up to 10 days of unpaid leave to an employee whose spouse is on leave from military deployment. A district with fewer than 25 employees may use the following section at its discretion. In addition, 29 USC 2612 authorizes an employee to take up to 26 work weeks of unpaid military caregiver leave or up to 12 weeks of "exigency" leave during a single 12-month period, as determined by the district; see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. ***

An employee who works an average of 20 hours or more per week and whose spouse is a member of the United States Armed Forces, National Guard, or reserves may take up to 10 days of unpaid leave during a period that his/her spouse is on leave from deployment during a military conflict, as defined in Military and Veterans Code 395.10. (Military and Veterans Code 395.10)

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

Leave for Emergency Duty

***Note: Labor Code 230.3 prohibits a district from discharging or discriminating against an employee who takes time off to perform emergency duty as specified below. Labor Code 230.3 defines emergency rescue personnel as a member of a federal, state, local, or private fire department or agency, as well as a sheriff or police department. ***

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)

***Note: Pursuant to Labor Code 230.4, as amended by AB 11 (Ch. 120, Statutes of 2013), the requirement for a district with 50 or more employees to grant an employee who is a volunteer firefighter leaves of absence for up to 14 days per calendar year for training purposes has been extended to employees who are reserve peace officers and emergency rescue personnel as specified in the following paragraph. A district with fewer than 50 employees may use or delete this paragraph at its discretion. ***

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

***Note: Labor Code 1500-1507 require a district with more than 15 employees to provide at

least 10 days of unpaid leave per year, beyond any leave otherwise available to employees, to employees who volunteer with the Civil Air Patrol and are directed to respond to an emergency operational mission, as provided below. Labor Code 1503 specifies that a district may not require an employee to first exhaust all accrued vacation, personal, sick, or any other available leave in order to use Civil Air Patrol leave. ***

***Note: If the district chooses to offer more than 10 days of such leave per year or to provide paid leave, it should modify the following paragraph accordingly. A district with 15 or fewer employees may use or delete this section at its discretion. ***

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

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

Legal Reference:
EDUCATION CODE
44036-44037 Leaves of absence for judicial and official appearances
44963 Power to grant leaves of absence (certificated)
44981 ~~Leaves~~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 Time off to appear in court~~
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~~ or~~, spouse~~ or~~, 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

PERSONAL ILLNESS/INJURY LEAVE

***Note: The following optional administrative regulation is subject to collective bargaining. Twelve days of paid personal illness or injury leave (sick leave) per year is the minimum prescribed by Education Code 45191 for classified employees in both merit and non-merit system districts. The Governing Board may allow additional days at its discretion; if it does so, the following paragraph should be revised accordingly. ***

***Note: Effective July 1, 2015, Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including classified employees. Additional requirements of Labor Code 245-249 include, but are not limited to, display of a poster containing specified information at every workplace, provision of each employee's sick leave balance on his/her wage statements, and maintenance of leave usage documentation for three years. The provisions of Labor Code 245-249 are very broad and only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all the conditions for this exemption, this administrative regulation has been drafted to include the requirements of Labor Code 245-249. Any district whose collective bargaining agreement meets all the conditions for exemption may modify this administrative regulation accordingly. ***

***Note: See sections titled "Healthy Workplaces, Healthy Families Act Requirements" and "Short-Term and Substitute Employees" below for more details of AB 1522 requirements. For sick leave for certificated employees, see AR 4161.1/4361.1 - Personal Illness/Injury Leave. ***

~~Full time~~ Classified employees employed five days per week are entitled to 12 days leave of absence, with full pay, for personal illness or injury (sick leave) per fiscal year. Employees who ~~serve~~work less than a full fiscal year or ~~less~~fewer than five days a week (part-time employees) shall be granted ~~comparable~~ sick leave in proportion to the time they work~~. (Education Code 45191~~, except when the sick leave will be less than the district grants short-term or substitute employees pursuant to Labor Code 246. (Education Code 45191; Labor Code 245-249)

(cf. 4161/4261/4361 - Leaves)
~~(cf. *4161.9/4261.9/4361.9 - Catastrophic Leave Program*)~~

PERSONAL ILLNESS/INJURY LEAVE (continued)

~~An employee may take sick leave at any time during the year, even if credit for sick leave has not yet been accrued. However, new employees shall not be entitled to more than six days of sick leave until they have completed six months of active service with the district. (Education Code 45191)~~

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

~~who does not complete a given year of service shall be charged for any unearned sick leave used as of the date of termination.~~

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

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

~~A classified employee who leaves the district after at least one year of employment and accepts employment in another district or county office of education within one year shall have transferred with him/her the total amount of accumulated sick leave. This provision shall not apply to employees whose employment is terminated due to action initiated by the district for cause. The district may not require new employees to waive their leave accumulated in a previous district. (Education Code 45202)~~

~~(cf. *4218 - Dismissal/Suspension/Disciplinary Action)*~~

Classified employees may use leave ~~may be used by classified employees for~~for absences due to:

1. ~~Absences caused by~~ Accident or illness, whether or not the absence arises out of or in the course of employment, or by quarantine which results from contact ~~during the performance of the employee's duties~~ with other persons having a contagious disease during the employee's performance of his/her duties (Education Code 45199)

2. ~~Absences due to~~ Pregnancy, childbirth, and recovery (Education Code 45193)

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

3. ~~Cases of~~ Personal necessity ~~(~~as specified in Education Code 45207~~)~~

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

***Note: Optional item #4 below may be revised to specify a different minimum increment. ***

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

PERSONAL ILLNESS/INJURY LEAVE (continued)

5. ~~Cases of industrial accidents~~Industrial accident or ~~illnesses~~illness when leave granted specifically for that purpose has ~~expired~~been exhausted (Education Code 45192)

(cf. 4261.11 - Industrial Accident/Illness Leave)

~~6. Illness of the employee's child, parent or spouse, up to the amount of sick leave that would be accrued during six months (Labor Code 233)~~

***Note: Pursuant to Labor Code 233, any employer who provides sick leave for employees must permit them to use sick leave in any calendar year to attend to the illness of their child, parent, spouse, domestic partner, or domestic partner's child, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement (e.g., six days accrued during six months for full-time classified employees, unless the district has established an amount that is higher than the legal minimum). Classified employees also may use sick leave for personal necessity, including the serious illness of a member of the employee's immediate family pursuant to Education Code 45207; see AR 4161.2/4261.2/4361.2 - Personal Leaves. Districts are cautioned to consult legal counsel regarding the possible interaction of sick leave and personal necessity leave provisions in the Education Code and Labor Code. ***

6. Illness of the employee's child, parent, spouse, domestic partner, or domestic partner's child for up to the amount of leave that would be accrued during six months for personal illness or injury (Labor Code 233)

***Note: Pursuant to Labor Code 246.5, as added by AB 1522 (Ch. 317, Statutes of 2014), paid sick leave may also be used for the purposes specified in items #7 and #8 below. Labor Code 245.5, as added by AB 1522, defines "family member" for the purpose of item #7 to include a registered domestic partner, grandparent, and sibling. Item #8 applies only to employees who are victims of domestic violence, sexual assault, or stalking. For more details of AB 1522 requirements, see sections titled "Healthy Workplaces, Healthy Families Act Requirements" and "Short-Term and Substitute Employees" below. For additional information about leaves for victims of domestic violence, sexual assault, or stalking, see AR 4161.2/4261.2/4361.2 - Personal Leaves. ***

7. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5 (Labor Code 246.5)

8. Need of the employee to obtain or seek any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee, or his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 246.5)

An employee may take leave for personal illness or injury at any time during the year, even if credit for such leave has not yet been accrued. However, a new full-time classified employee shall not be entitled to more than six days of sick leave until he/she has completed six months of active service with the district. (Education Code 45191)

PERSONAL ILLNESS/INJURY LEAVE (continued)

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

***Note: The following paragraph is optional. ***

At the beginning of each school year, each classified employee shall be notified of the amount of sick leave which he/she has accumulated.

***Note: The following paragraph is optional. ***

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

The district 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)

***Note: Pursuant to Education Code 45202, a classified employee is entitled to have accumulated sick leave transferred with him/her in the circumstances specified in the following optional paragraph. ***

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

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

Notification of Absence

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

An employee shall notify ~~the district~~ the Superintendent or the designated manager or supervisor of his/her need to be absent as soon as such need is known~~,~~ so that the services of a substitute ~~services~~ may be secured as necessary. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district ~~by~~ not later than ~~3 p.m.~~three o'clock in the afternoon of the day preceding the day on which he/she intends to return to work. If ~~failure~~the employee fails to ~~so~~ notify the district and the failure results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

Continued Absence After Available Sick Leave ~~Beyond 12 Days~~Is Exhausted/Differential Pay

***Note: Pursuant to Education Code 45196, a district is authorized to pay any employee who has exhausted his/her paid leaves his/her salary minus the actual pay received by a substitute for the remainder of a five-month absence to which the employee is entitled (Option 1 below). Alternatively, such an employee may be compensated at 50 percent or more of his/her salary for up to 100 working days, regardless of whether or not a substitute is hired (Option 2 below). ***

***Note: Districts that maintain a catastrophic leave program for their classified employees should specify how the program will affect the differential leave pay to which the employee may be entitled. ***

***Note: In 53 Ops.Cal.Atty.Gen.111 (1970), the Attorney General clarified that a classified employee is entitled to a total period of five months, commencing with the first day of illness, during which the amount deducted from his/her salary may not exceed the sum which is actually paid a substitute. This five-month period runs concurrently with any other paid leave. After the employee has exhausted all paid leaves, he/she is entitled to differential pay for the balance of the five-month period. ***

***Note: In California School Employees Association v. Tustin Unified School District, the court ruled that a district could deduct from the absent employee's salary only the cost of an outside substitute employee, not the cost of existing classified employee(s) working additional hours to fill the position during the absence. ***

***Note: Pursuant to Education Code 45196, the amount paid to a substitute must be less than the absent employee's salary unless the Board has adopted a salary schedule for substitutes. ***

~~After an~~ A classified employee who has exhausted all paid leaves, including sick leave, ~~he/she~~ shall for the remainder of the five-month period of absence to which he/she is entitled, receive his/her regular salary minus the actual amount paid a substitute to fill the employee's position during his/her absence. (Education Code 45196)

~~After a permanent employee has exhausted all available sick leave, vacation, compensatory overtime and any other paid leave, and he/she is still absent because of nonindustrial accident or illness, he/she shall be so notified in writing and offered an opportunity to request additional leave. The Board may grant the employee additional leave, paid or unpaid, for a period not to exceed six months and may renew this leave for two additional six-month periods or for lesser periods. Total leave so granted shall not exceed 18 months.~~

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

Extension of Leave

***Note: Pursuant to Education Code 45195, the following extension of leave may be either paid or unpaid, and the Board may grant full pay for the full 18 months' allowable absence, if desired. ***

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~~, and he/she is still absent because of nonindustrial accident or illness, he/she~~ shall be so notified, in writing, and offered an opportunity to request additional leave. The Board may grant the employee additional leave, paid or unpaid, for a period not to exceed six months and may renew this leave for two additional six-month periods or for lesser periods. ~~Total~~The total additional leave ~~so~~ granted shall not exceed 18 months. (Education Code 45195)

(cf. 4216 - Probationary/Permanent Status)

~~When a classified~~ If the employee ~~has exhausted all available leaves, paid or unpaid, and~~ is still ~~not able~~unable to resume his/her duties after all available paid and unpaid leaves have been exhausted, the employee shall be placed on a reemployment list for a period of 39 months. If during this time the employee becomes able to resume the duties of his/her position, he/she shall be ~~reemployed~~offered reemployment in the first vacancy in the classification of his/her previous assignment. During the 39 months, the employee's reemployment shall take preference over all other applicants except those laid off for lack of work or lack of funds, in which case the employee shall be ranked according to his/her seniority. (Education Code 45195)

Verification Requirements

***Note: Education Code 45191 mandates the Board to adopt regulations that require proof of illness or injury and prescribe the means of verification. However, Education Code 45191 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. The following section should be modified to reflect district practice and any procedures that have been specified in negotiated agreements. ***

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

The Superintendent or designee may, at any time, require additional written verification by the employee's physician or medical practitioner. Such verification ~~shall~~ may be required after four or more consecutive days whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever ~~clear~~available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the Superintendent or designee may require an employee to visit a physician selected by the district ~~and~~, at district expense, in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for ~~further~~additional leave of absence and a prognosis ~~for~~as to when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent or designee may, after giving notice to the employee, ~~may~~ deny ~~further~~the request for additional leave.

***Note: 42 USC 2000ff-1, the Genetic Information Nondiscrimination Act, and its implementing regulations, 29 CFR 1635.1-1635.12, specify that it is unlawful for a district to request, require, or purchase an employee's or his/her family member's individual genetic information except in complying with the medical certification requirements for family care and medical leave purposes

or with the employee's prior written authorization. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. Pursuant to 29 CFR 1635.9, any such information received by the district must be kept confidential as specified below. ***

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

Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and shall not be disclosed except in accordance with 29 CFR 1635.9.

Before returning to work, an employee who has been absent for surgery, hospitalization, or extended medical treatment may be asked to submit a letter from his/her physician stating that he/she is able to return to work and stipulating any recommended restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)
(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

Healthy Workplaces, Healthy Families Act Requirements

***Note: Pursuant to Labor Code 245-249, as added by AB 1522 (Ch. 317, Statutes of 2014), all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act could result in enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this new law should consult its legal counsel. ***

No employee, including a short-term or substitute employee, shall be denied the right to use accrued sick days and the district shall not in any manner discriminate or retaliate against an employee for using or attempting to use sick leave, filing a complaint with the Labor Commissioner, or alleging district violation of Labor Code 245-249.

To ensure the district's compliance with Labor Code 245-249, the Superintendent or designee shall:

1. At a conspicuous location in each workplace, display a poster on paid sick leave that includes the following information:

a. That an employee is entitled to accrue, request, and use paid sick days

b. The amount of sick days provided by Labor Code 245-249

c. The terms of use of paid sick days

d. That discrimination or retaliation against an employee for requesting or using sick leave is prohibited by law and an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against him/her

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

Short-Term and Substitute Employees

***Note: In addition to the requirements specified above, Labor Code 245-249, as added by AB 1522 (Ch. 317, Statutes of 2014), requires a district to either (1) allow short-term and substitute employees to carry over accrued paid sick leave to the following year up to a maximum of 48 hours or 6 work days, in which case the district must track the amount of sick leave earned by each employee, or (2) grant 24 hours of paid sick leave to each such employee at the beginning of each year, in which case no sick leave carries over to the following year. Districts should select the option below which corresponds to their approach under Labor Code 246. ***

Any short-term or substitute employee who works for 30 or more days within a year of his/her employment shall be entitled to one hour of paid sick leave for every 30 hours worked. Such employee may begin to use accrued paid sick days on the 90th day of his/her employment, after which he/she may use the sick days as they are accrued. Accrued paid sick days shall carry over to the following year of employment, up to a maximum of 48 hours. (Labor Code 246)

***Note: The following paragraph applies to both options and reflects the intent of the legislature in enacting the Healthy Workplaces, Healthy Families Act, including to enable California workers to address their own and their family's health needs and to provide them with economic security when they need to take time off work for reasons of domestic violence, sexual assault, or stalking. ***

A short-term or substitute employee may use accrued sick leave for absences due any condition specified in item #7 or #8 above. (Labor Code 246.5)

Legal Reference:
EDUCATION CODE
45103 Substitute employees
45190 Leaves of absence and vacations
45191 Leaves of absence for illness and injury
45193 Leave of absence for pregnancy (re use of sick leave under certain circumstances)
45195 Additional leave for nonindustrial accident or illness; reemployment preference
45196 Salary; deductions during sick leave
45202 Transfer of accumulated sick leave and other benefits
LABOR CODE
230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off
230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off
233 Illness of child, parent ~~or~~, 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)

(3/02 7/07) 12/14

Regulation
approved: March 9, 2002

JEFFERSON SCHOOL DISTRICT
Tracy, California