All Personnel BP 4156.3
4256.3
EMPLOYEE PROPERTY REIMBURSEMENT 4356.3

The Board of Trustees authorizes the Superintendent or designee to pay the cost of replacing or repairing employee personal property, except cash, which has been stolen or intentionally destroyed or damaged while being used for work-related purposes.

No reimbursement shall be made for accidental damage or for any loss due to lack of personal supervision or failure to keep property in a secured area.

The maximum payment shall be the amount specified by the district's insurance carrier for such loss or the amount specified in the applicable collective bargaining agreement, whichever is less.

(cf. 3515.4 - Recovery for Property Loss or Damage)
(cf. 5131.5 - Vandalism and Graffiti)

Reimbursement for personal items used for work-related purposes shall be made only if: (Education Code 35213)

1. Use of the personal property was approved by the principal, site supervisor or designee before the property was brought to school or district premises

2. At that time, the employee and district representative agreed on the value of the property

Legal Reference:

EDUCATION CODE
35213 Reimbursement for loss, destruction or damage of personal property
48904 Liability of parent/guardian for willful misconduct; withholding of grades, diplomas and transcripts
CIVIL CODE
1714.1 Liability of parent or guardian for act of willful misconduct by a minor

Policy adopted:

SAN LEANDRO UNIFIED SCHOOL DISTRICT
San Leandro, California

All Personnel BP 4157(a)
4257
4357

EMPLOYEE SAFETY

The Board of Trustees is committed to maximizing employee safety and believes that workplace safety is every employee's responsibility. Working conditions and equipment shall comply with standards prescribed by federal, state, and local laws and regulations.

(cf. 0450 - Comprehensive Safety Plan)

No employee shall be required or permitted to be in any place of employment which is unsafe or unhealthful. (Labor Code 6402)

The Board expects all employees to use safe work practices and, to the extent possible, correct any unsafe conditions which may occur. If an employee is unable to correct an unsafe condition, he/she shall immediately report the problem to the Superintendent or designee.

The Superintendent or designee shall promote safety and correct any unsafe work practices through education and enforcement.

(cf. 4117.4 - Dismissal)
(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

The Superintendent or designee shall establish and implement a written injury and illness prevention program in accordance with law. (Labor Code 6401.7)

(cf. 3514 - Environmental Safety)
(cf. 3514.1 - Hazardous Substances)
(cf. 3516 - Emergencies and Disaster Preparedness Plan)
(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)
(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)
(cf. 4119.43/4219.43/4319.43 - Universal Precautions)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4158/4258/4358 - Employee Security)

The Superintendent or designee shall ensure the ready availability of first aid materials at district workplaces and shall make effective provisions, in advance, for prompt medical treatment in the event of an employee's serious injury or illness. (8 CCR 3400)

No employee shall be discharged or discriminated against for making complaints, instituting proceedings, or testifying with regard to employee safety or health or for participating in any occupational health and safety committee established pursuant to Labor Code 6401.7. (Labor Code 6310)

Legal Reference: (see next page)

EMPLOYEE SAFETY (continued)

Legal Reference:

EDUCATION CODE
32030-32034 Eye safety
32225-32226 Communications devices in classrooms
32280-32289 School safety plans
44984 Required rules for industrial accident and illness leave of absence
GOVERNMENT CODE
3543.2 Scope of bargaining
LABOR CODE
3300 Definitions
6305 Occupational safety and health standards; special order
6310 Retaliation for filing complaint prohibited
6400-6413.5 Responsibilities and duties of employers and employees, especially:
6401.7 Injury and illness prevention program
CODE OF REGULATIONS, TITLE 8
3203 Injury and illness prevention program
3400 Medical services and first aid
5095-5100 Control of noise exposure
CODE OF FEDERAL REGULATIONS, TITLE 29
1910.95 Noise standards

Management Resources:

DEPARTMENT OF INDUSTRIAL RELATIONS PUBLICATIONS
Guide to Developing Your Workplace Injury and Illness Prevention Program, rev. August 2005
WEB SITES
California Department of Industrial Relations, Occupational Safety and Health: http://www.dir.ca.gov/occupational_safety.html
Centers for Disease Control and Prevention: http://www.cdc.gov
National Hearing Conservation Association: http://www.hearingconservation.org
National Institute for Occupational Safety and Health: http://www.cdc.gov/niosh
U.S. Department of Labor, Occupational Safety and Health Administration: http://www.osha.gov

The Superintendent or designee shall provide and implement safety devices, safeguards, methods, and processes that are reasonably adequate to render the employment and place of employment safe and healthful. (Labor Code 6401)

(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)
(cf. 4261.1 - Industrial Accident/Illness Leave)

Injury and Illness Prevention Program

The district's injury and illness prevention program shall cover all district employees and all other workers whom the district controls or directs and directly supervises on the job to the extent that the workers are exposed to hazards specific to their worksite and job assignment. The obligation of contractors or other employers who control or direct and supervise their own employees on the job shall not be affected by the district's injury and illness prevention program. (Labor Code 6401.7)

The district's injury and illness prevention program shall include: (Labor Code 6401.7; 8 CCR 3203)

1. The name/position of the person(s) with authority and responsibility for implementing the program.

2. A system for ensuring that employees comply with safe and healthful work practices, which may include, but not be limited to:

    a. Recognition of employees who follow safe and healthful work practices

(cf. 4156.2/4256.2/4356.2 - Awards and Recognition)

    b. Training and retraining programs

    c. Disciplinary actions

(cf. 4218 - Dismissal/Suspension/Disciplinary Action)
(cf. 4118 - Suspension/Disciplinary Action)

3. A system for communicating with employees, in a form readily understandable by all employees, on matters related to occupational health and safety, including provisions designed to encourage employees to report hazards at the worksite without fear of reprisal. The communications system may include, but not be limited to:

    a. Meetings

    b. Training programs

EMPLOYEE SAFETY (continued)

c. Posting

d. Written communications

e. A system of anonymous notification by employees about hazards

f. A labor/management safety and health committee

4. Procedures for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. Such inspections shall be made:

a. Whenever new substances, processes, procedures, or equipment that represents a new occupational safety or health hazard is introduced into the workplace

b. Whenever the district is made aware of a new or previously unrecognized hazard

(cf. 3514 - Environmental Safety)
(cf. 3514.1 - Hazardous Substances)

5. A procedure for investigating occupational injury or illness.

6. Methods and/or procedures for correcting unsafe or unhealthful conditions, work practices, and work procedures in a timely manner, based on the severity of the hazard, when the hazard is observed or discovered.

When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, these procedures shall call for the removal of all exposed staff from the area except those necessary to correct the hazardous condition. Employees needed to correct the condition shall be provided necessary safeguards.

7. Provision of training and instruction as follows:

a. To all new employees

b. To all employees given new job assignments for which training has not previously been received

EMPLOYEE SAFETY (continued)

c. Whenever new substances, processes, procedures, or equipment is introduced into the workplace and represents a new hazard

d. Whenever the district is made aware of a new or previously unrecognized hazard

e. To supervisors, to familiarize them with the safety and health hazards to which employees under their immediate direction and control may be exposed

(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

Hearing Protection

Whenever employee noise exposure equals or exceeds the standards specified in law, the Superintendent or designee shall implement a hearing conservation program in accordance with state and federal regulations, including, when required, monitoring of sound levels, audiometric testing of affected employees, the provision of hearing protectors, and employee training. (8 CCR 5095-5100; 29 CFR 1910.95)

Eye Safety Devices

Eye safety devices shall be worn by employees whenever they are engaged in or observing an activity involving hazards or hazardous substances likely to cause injury to the eyes. (Education Code 32030-32034)

All Personnel BP 4157.1
4257.1
WORK-RELATED INJURIES 4357.1

The Board of Trustees desires to provide its employees with insurance and workers' compensation benefits in accordance with law. The Superintendent or designee shall develop an efficient claims handling process in order to reduce costs and facilitate employee recovery.

(cf. 3320 - Claims and Actions Against the District)
(cf. 4032 - Reasonable Accommodation)
(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4157/4257/4357 - Employee Safety)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)
(cf. 4261.11 - Industrial Accident/Illness Leave)

An employee shall report any work-related injury or illness to his/her supervisor as soon as practicable. Upon learning of an injury, a supervisor shall promptly report the incident to the Superintendent or designee and the insurance carrier as appropriate.

The Superintendent or designee shall ensure that every new employee is notified of his/her right to receive workers' compensation if injured at work and that injured employees are given notice of rights in accordance with law.

The Superintendent or designee shall ensure that notifications regarding workers' compensation are posted in accordance with law.

Legal Reference:
EDUCATION CODE
44984 Industrial accident and illness leaves, certificated employees
45192 Industrial accident and illness leaves, classified employees
LABOR CODE
3200-4855 Workers' compensation, especially:
3550-3553 Employee notice
3600-3605 Conditions of liability
3760 Report of injury to insurer
4600 Provision of medical and hospital treatment by employer
4906 Disclosures and statements
5400-5413 Notice of injury or death
6409.1 Reports
CODE OF REGULATIONS, TITLE 8
15596 Notice of employee rights

Management Resources:
WEB SITES
California Department of Industrial Relations: http://www.dir.ca.gov

Policy adopted: **SAN LEANDRO UNIFIED SCHOOL DISTRICT**
San Leandro, California

EMPLOYEE SECURITY

The Board of Trustees desires to provide a safe and orderly work environment for all employees. As part of the district's comprehensive safety plan, the Superintendent or designee shall develop strategies for protecting employees from potentially dangerous persons and situations and for providing them with necessary assistance and support when emergency situations occur.

(cf. 0450 - Comprehensive Safety Plan)
(cf. 3515 - Campus Security)
(cf. 5131.4 - Student Disturbances)

Any employee against whom violence or any threat of violence has been directed in the workplace shall notify the Superintendent or designee immediately. The Superintendent or designee shall initiate legal and security measures to protect the employee and others in the workplace. In addition, the Superintendent or designee may initiate legal proceedings against any individual to recover damages for injury caused by the willful misconduct of that individual to the person or property of an employee or another person on district premises.

(cf. 3320 - Claims and Actions Against the District)
(cf. 3515.4 - Recovery for Property Loss or Damage)

The Superintendent or designee shall ensure that employees are trained in crisis prevention and intervention techniques in order to protect themselves and students. Staff development may include training in classroom management, effective communication techniques, and crisis resolution.

(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

The Superintendent or designee also shall ensure that employees are informed, in accordance with law, of crimes and offenses committed by students who may pose a danger in the classroom.

The Superintendent or designee may make available at appropriate locations, including, but not limited to, district and school offices, gyms, and classrooms, communication devices that would enable two-way communication with law enforcement and others when emergencies occur.

(cf. 5141 - Health Care and Emergencies)

Use of Pepper Spray

Employees may not carry or possess pepper spray on school property or at school activities. On a case-by-case basis, however, the Superintendent or designee may allow an employee to possess pepper spray that meets the requirements of Penal Code 12403.7 when justified by unusual dangerous circumstances. Any employee who is negligent or careless in the possession or handling of pepper spray shall be subject to appropriate disciplinary measures.

EMPLOYEE SECURITY (continued)

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE
32210-32212 Willful disturbance, public schools or meetings
32225-32226 Communication devices
35208 Liability insurance
35213 Reimbursement for loss, destruction or damage of school property
44014 Report of assault by pupil against school employee
44807 Duty concerning conduct of students
48201 Transfer of student records
48900-48926 Suspension or expulsion
49079 Notification to teacher; student who has engaged in acts re: grounds suspension or expulsion
49330-49335 Injurious objects
CIVIL CODE
51.7 Freedom from violence or intimidation
CODE OF CIVIL PROCEDURE
527.8 Workplace violence safety
GOVERNMENT CODE
995-996.4 Defense of public employees
3543.2 Scope of representation
PENAL CODE
71 Threatening public officers and employees and school officials
240-246.3 Assault and battery, including:
241.3 Assault against school bus drivers
241.6 Assault on school employee includes board member
243.3 Battery against school bus drivers
243.6 Battery against school employee includes board member
245.5 Assault with deadly weapon; school employee includes board member
290 Registration of sex offenders
601 Trespass by person making credible threat
626-626.11 School crimes
646.9 Stalking
12403.7 Weapons approved for self defense
WELFARE AND INSTITUTIONS CODE
827 Juvenile court proceedings; reports; confidentiality
828.1 District police or security department, disclosure of juvenile records
COURT DECISIONS
City of San Jose v. William Garbett, (2010) 190 Cal. App. 4th 526

Management Resources:

WEB SITES
CSBA: http://www.csba.org
California Department of Education, Safe Schools and Violence Prevention Office: http://www.cde.ca.gov/ls/ss

An employee may use reasonable and necessary force for his/her self-defense, defense of another person, or protection of property; to quell a disturbance threatening physical injury to others; or to obtain possession of weapons or other dangerous objects within the control of a student. (Education Code 44807, 49001)

(cf. 5131.7 - Weapons and Dangerous Instruments)
(cf. 5144 - Discipline)

Employees shall promptly report to the principal or other immediate supervisor any attack, assault, or physical threat made against them by a student.

Both the employee and the principal or other immediate supervisor shall promptly report such instances to the appropriate local law enforcement agency. (Education Code 44014)

In addition, employees shall promptly report to the principal or supervisor, and may report to law enforcement, any attack, assault, or threat made against them on school grounds by any other individual.

(cf. 3515.2 - Disruptions)

Reports of attack, assault, or threat shall be forwarded immediately to the Superintendent or designee.

(cf. 3320 - Claims and Actions Against the District)
(cf. 3515.4 - Recovery for Property Loss or Damage)
(cf. 3530 - Risk Management/Insurance)

Notice Regarding Student Offenses Committed While Under School Jurisdiction

The Superintendent or designee shall inform the teacher(s) of each student who has engaged in, or is reasonably suspected of, any act during the previous three school years which could constitute grounds for suspension or expulsion under Education Code 48900, with the exception of the possession or use of tobacco products, or Education Code 48900.2, 48900.3, 48900.4, or 48900.7. This information shall be based upon district records maintained in the ordinary course of business or records received from a law enforcement agency. (Education Code 49079)

(cf. 5125 - Student Records)
(cf. 5144.1 - Suspension and Expulsion/Due Process)

Upon receiving a transfer student's record regarding acts committed by the student that resulted in his/her suspension or expulsion, the Superintendent or designee shall inform the student's teacher(s) that the student was suspended or expelled from his/her former district and of the act that resulted in the suspension or expulsion. (Education Code 48201)

EMPLOYEE SECURITY (continued)

Information received by teacher(s) shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher. (Education Code 49079)

Notice Regarding Student Offenses Committed While Outside School Jurisdiction

When a minor student has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance or committed specified crimes involving serious acts of violence, the district police or security department may provide written notification to the Superintendent. (Welfare and Institutions Code 828.1)

(cf. 3515.3 - District Police/Security Department)

When informed by the court that a minor student has been found by a court to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Penal Code 290, assault or battery, larceny, vandalism, or graffiti, the Superintendent or designee shall so inform the school principal. (Welfare and Institutions Code 827)

The principal shall disseminate this information to any counselor who directly supervises or reports on the student's behavior or progress. The principal also may inform any teacher or administrator he/she thinks may need the information so as to work with the student appropriately, avoid being needlessly vulnerable, or protect others from vulnerability. (Welfare and Institutions Code 827)

Any court-initiated information that a teacher, counselor, or administrator receives shall be kept confidential and used only to rehabilitate the student and protect other students and staff. The information shall be further disseminated only when communication with the student, parent/guardian, law enforcement staff, and probation officer is necessary to rehabilitate the student or to protect students and staff. (Welfare and Institutions Code 827)

When a student is removed from school as a result of his/her offense, the Superintendent shall hold the court's information in a separate confidential file until the student is returned to the district. If the student is returned to a different district, the Superintendent shall transmit the information provided by the student's parole or probation officer to the superintendent of the new district of attendance. (Welfare and Institutions Code 827)

Any confidential file of court-initiated information shall be kept until the student becomes 18, graduates from high school, or is released from juvenile court jurisdiction, whichever occurs first, and shall then be destroyed. (Welfare and Institutions Code 827)

EMPLOYEE SECURITY (continued)

Procedures to Maintain Confidentiality of Student Offenses

In order to maintain confidentiality when providing information about student offenses to counselors and teachers of classes/programs to which a student is assigned, the principal or designee shall send the staff member a written notification that one of his/her students has committed an offense that requires his/her review of a student's file in the school office. This notice shall not name or otherwise identify the student. The staff member shall be asked to initial the notification and return it to the principal or designee.

The staff member shall also initial the student's file when reviewing it in the school office. Once the district has made a good faith effort to comply with the notification requirement of Education Code 49079 and Welfare and Institutions Code 827, an employee's failure to review the file constitutes district compliance with the requirement to provide notice to the teacher.

Use of Pepper Spray

Employees who possess pepper spray on school property shall be notified of the following conditions:

1. The pepper spray shall be used only in self-defense.

2. An employee who uses pepper spray other than in self-defense shall be subject to disciplinary action by the district and, in accordance with law, a fine and/or imprisonment.

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

3. Employees shall ensure that the pepper spray is stored in a secure place and not accessible to students or other individuals. An employee who is negligent in the storage of pepper spray may be subject to disciplinary action.

Employees wishing to carry pepper spray on school property or to a school-related activity shall submit to the Superintendent or designee a written request setting forth the need for the pepper spray. Should the Superintendent or designee determine that the employee may not carry pepper spray, the employee shall receive a written statement of the reason for this determination.

All Personnel BP 4159
4259
EMPLOYEE ASSISTANCE PROGRAMS 4359

The Board of Trustees recognizes that school district employees may have problems which can have detrimental effects upon job performance and student safety. The Board encourages employees to seek help when such problems exist and to take advantage of the resources that are available to assist them.

Employees shall have confidential access to information about the district's employee assistance program. This information shall be available to all employees and their spouses and dependents.

(cf. 3513.3 - Tobacco-Free Schools)
(cf. 4020 - Drug and Alcohol-Free Workplace)
(cf. 5131.62 - Tobacco)

Management and supervisory staff shall be knowledgeable about the district's employee assistance program and may counsel employees about the program, as appropriate.

Participation in the assistance program shall not jeopardize an employee's employment or career advancement, nor will it protect the employee from disciplinary action for substandard job performance.

(cf. 4032 - Reasonable Accommodation)
(cf. 4115 - Evaluation/Supervision)
(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4161/4261/4361 - Leaves)
(cf. 4161.1/4261.1 - Personal Illness/Injury Leave)
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)
(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)
(cf. 4215 - Evaluation/Supervision)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)
(cf. 4315 - Evaluation/Supervision)
(cf. 4361.1 - Personal Illness/Injury Leave)

Legal Reference:
EDUCATION CODE
35160 Authority of governing board
35160.1 Broad authority of school districts
44962 Leaves of absence for certificated employees
44964 Power to grant leaves of absence for accident, illness or quarantine
45190-45209 Resignations and leaves of absence for classified employees
GOVERNMENT CODE
8355 Certification to contracting or granting agency; requisites
HEALTH AND SAFETY CODE
104420 Providing information re: smoking cessation program
UNITED STATES CODE, TITLE 41
8101-8106 Drug-Free Workplace Act

Policy adopted: **SAN LEANDRO UNIFIED SCHOOL DISTRICT**
San Leandro, California

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

(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

The Board recognizes the following justifiable reasons for employee absence:

1. Personal illness or injury

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

2. Industrial accident or illness

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

3. Family care and medical leave

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

4. Military service

(cf. 4161.5/4261.5/4361.5 - Military Leave)

5. Personal necessity and personal emergencies

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

6. Disability leave for certificated employees in accordance with Education Code 44986

7. Vacations for classified staff and certificated management staff, as applicable

8. Sabbaticals for purposes of study or training related to the employee's job duties

(cf. 4161.3 - Professional Leaves)
(cf. 4261.3 - Professional Leaves)

9. Attendance at work-related meetings and staff development opportunities

(cf. 4131 - Staff Development)
(cf. 4231 - Staff Development)
(cf. 4331 - Staff Development)

LEAVES (continued)

10. Compulsory leave

(cf. 4118 - Suspension/Disciplinary Action)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Long-Term Leaves

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

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

The Board shall consider any written request by an employee to return to work prior to the expiration date of the leave.

Administrative and Supervisory Personnel

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

Classified administrative and supervisory employees who are not subject to the district's bargaining agreement for classified employees shall generally be entitled to those leave provisions provided in the bargaining agreement for other classified employees unless otherwise specified in individual contract, memoranda of understanding, Board policy, administrative regulation, or law.

(cf. 2121 - Superintendent's Contract)
(cf. 4300 - Administrative and Supervisory Personnel)
(cf. 4312.1 - Contracts)

Legal Reference: (see next page)

LEAVES (continued)

Legal Reference:

EDUCATION CODE
22850-22856 Pension benefits, STRS members on military leave
44018 Compensation for employees on active military duty
44036-44037 Leaves of absence for judicial and official appearances
44043.5 Catastrophic leave
44800 Effect of active military service on status of employees
44842 Failure to provide notice or to report to work
44940 Sex offenses and narcotic offenses; compulsory leave of absence
44962-44988 Leaves of absence (certificated)
45059 Employee ordered to active military/naval duty, computation of salary
45190-45210 Leaves of absence (classified)
FAMILY CODE
297-297.5 Registered domestic partner rights, protections and benefits
GOVERNMENT CODE
3543.1 Release time for representatives of employee organizations
3543.2 Scope of representation
12945.1-12945.2 California Family Rights Act
20990-21013 Pension benefits, PERS members on military leave
LABOR CODE
230-230.2 Leaves for victims of domestic violence, sexual assault or specified felonies
230.3 Leave for emergency personnel
230.4 Leave for volunteer firefighters
230.8 Leave to visit child's school
233 Illness of child, parent, spouse or domestic partner
MILITARY AND VETERANS CODE
395-395.9 Military leave
395.10 Leave when spouse on leave from military deployment
UNITED STATES CODE, TITLE 29
2601-2654 Family and Medical Leave Act of 1993
UNITED STATES CODE, TITLE 38
4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994

Failure to Return to Service After Leave

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

1. The employee fails to report for duty, without good cause, at the beginning of the school year after having notified the Board of Trustees of his/her intention to remain in service with the district in accordance with Education Code 44842.

2. The district had specifically notified the employee, at least five days in advance, of the time and place at which the employee was to report to work.

3. The employee did not request or was not granted a leave of absence authorized by the Board.

(cf. 4112.1 - Contracts)

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

(cf. 4117.4 - Dismissal)

Use of Leaves by Classified Employees

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

PERSONAL ILLNESS/INJURY LEAVE

Full-time certificated employees 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 shall be granted comparable sick leave in proportion to the time they work. (Education Code 44978)

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

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

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

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

Any certificated employee who leaves the district after at least one school year of employment and 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 shall not require new employees to waive leave accumulated in a previous district. (Education Code 44979, 44980)

Sick leave may be used by a certificated employee for absences due to:

1. Temporary inability to perform his/her 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. 4157.1/4257.1/4357.1 - Work-Related Injuries)

2. Pregnancy, miscarriage, childbirth, and 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)

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

PERSONAL ILLNESS/INJURY LEAVE (continued)

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)

6. Illness of the employee's child, parent/guardian, spouse, registered domestic partner, or domestic partner's child in an amount not less than the sick leave that would be accrued by the employee during six months at his/her then current rate of entitlement (Labor Code 233)

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

(cf. 4121 - Temporary/Substitute Personnel)

Continued Absence After Available Sick Leave Is Exhausted

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 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 would have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

An employee shall not be provided more than one five-month period per illness or 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. Placement on the reemployment list shall be for 24 months for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period. If during this time the employee becomes medically able, 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)

PERSONAL ILLNESS/INJURY LEAVE (continued)

Verification Requirements

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 other authorized health care provider. Such verification shall be required 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 evidence indicates that an absence is not related to illness or injury.

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

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 necessary restrictions or limitations.

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

Legal Reference: (see next page)

PERSONAL ILLNESS/INJURY LEAVE (continued)

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
233 Illness of child, parent, spouse or domestic partner
234 Absence control policy
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
COURT DECISIONS
Veguez v. Governing Board of Long Beach Unified School District, (2005) 127 Cal.App.4th 406

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

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)
(cf. 4157/4257/4357 - Employee Safety)
(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
(cf. 4157.2/4257.2/4357.2 - Ergonomics)
(cf. 4161/4261/4361 - Leaves)

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

To be eligible for industrial accident or illness leave, a classified employee shall have served in the district continuously for at least three years.

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

When an employee is absent from his/her duties because of an industrial accident or illness: (Education Code 44043, 44044, 44984, 45192)

1. The leave shall start on the first day of absence.

2. During the period of absence, the employee shall be paid such portion of his/her wage or salary that, when added to the award granted under state workers' compensation laws, will not exceed his/her normal wage or salary.

3. The leave shall be reduced by one day for each day of authorized absence, regardless of an award granted under workers' compensation laws.

4. When the leave overlaps into the next fiscal year, the employee is entitled to only the amount of unused leave due the employee for the same illness or injury.

During any paid leave of absence, the employee shall endorse to the district any workers' compensation checks received on account of an industrial accident or illness. The Superintendent or designee shall then issue payment of the employee's normal wage or salary less any appropriate deductions, including, but not limited to, employee retirement contributions. (Education Code 44043)

Any employee receiving benefits under this leave shall, during periods of injury or illness, remain within California unless the Board of Trustees authorizes travel outside the state. (Education Code 44984, 45192)

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

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

(cf. 4116 - Probationary/Permanent Status)
(cf. 4154/4254/4354 - Health and Welfare Benefits)
(cf. 4216 - Probationary/Permanent Status)

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

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

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

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

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

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

INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)

(cf. 4217.3 - Layoff/Rehire)
(cf. 4218 - Dismissal/Suspension/Disciplinary Action)

Legal Reference:

EDUCATION CODE
44043 Temporary disability
44044 Temporary disability checks; waiver of endorsement to district
44977 Salary deductions during absence from duties
44978 Provisions for certificated employee sick leave
44978.1 Inability of certificated employee to return to duty; placement in another position or on reemployment list
44983 Exception to sick leave
44984 Industrial accident and illness leave, certificated employees
45191 Personal illness and injury leave, classified employees
45192 Industrial accident and illness leave, classified employees
LABOR CODE
3200-6002 Workers' compensation

Management Resources:

WEB SITES
Department of Industrial Relations: http://www.dir.ca.gov

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

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

(cf. 4121 - Temporary/Substitute Personnel)

Bereavement

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

(cf. 4161/4261/4361 - Leaves)

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

Personal Necessity

Employees may use a maximum of seven days of their accrued personal illness/injury 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)

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)

PERSONAL LEAVES (continued)

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

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

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

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, no such leave shall 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 a request reflects personal necessity.

Advance permission shall not be required of any employee in cases involving the death of a member of the employee's immediate family, an accident involving the employee's person or property or the person or property of a member of his/her immediate family, or the serious illness of a member of his/her 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.

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

Legal Duties

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

1. Serve on an inquest jury or trial jury

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

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

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

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

PERSONAL LEAVES (continued)

Employees shall be granted 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 regular earnings and any amount received for witness fees.

Leaves for Crime Victims

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

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

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

3. A felony provision of law proscribing theft or embezzlement

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

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

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

Leaves for Victims of Domestic Violence or Sexual Assault

An employee who is a victim of domestic violence or sexual assault as defined by law may use vacation, 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)

PERSONAL LEAVES (continued)

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

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

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

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

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

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

1. A police report indicating that the employee was a victim of domestic violence or sexual assault

2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court

3. Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence or sexual assault

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

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

PERSONAL LEAVES (continued)

order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the year. The employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

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)

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

Service on Education Boards and Committees

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

1. The service is performed within the state.

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

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

Employee Organization Activities

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

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

PERSONAL LEAVES (continued)

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

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

Religious Leave

The Superintendent or designee may grant an employee up to three days of leave per year for religious purposes, 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 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

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)

PERSONAL LEAVES (continued)

Leave for Emergency Duty

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

An employee who is a volunteer firefighter 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 or law enforcement training. (Labor Code 230.4)

Civil Air Patrol Leave

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

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

Legal Reference: (see next page)

PERSONAL LEAVES (continued)

Legal Reference:

EDUCATION CODE
44036-44037 Leaves of absence for judicial and official appearances
44963 Power to grant leaves of absence (certificated)
44981 Leave of absence for personal necessity (certificated)
44985 Leave of absence due to death in immediate family (certificated)
44987 Service as officer of employee organization (certificated)
44987.3 Leave of absence to serve on certain boards, commissions, etc.
45190 Leaves of absence and vacations (classified)
45194 Bereavement leave of absence (classified)
45198 Effect of provisions authorizing leaves of absence
45207 Personal necessity (classified)
45210 Service as officer of employee organization (classified)
45240-45320 Merit system, classified employees
FAMILY CODE
297-297.5 Registered domestic partner rights, protections, and benefits
GOVERNMENT CODE
3543.1 Release time for representatives of employee organizations
12945.1-12945.2 California Family Rights Act
LABOR CODE
230-230.2 Leave for victims of domestic violence, sexual assault, or specified felonies
230.3 Leave for emergency personnel
230.4 Leave for volunteer firefighters
230.8 Leave to visit child's school
233 Illness of child, parent, spouse, domestic partner or domestic partner's child
234 Absence control policy
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: (see next page)

PERSONAL LEAVES (continued)

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

SABBATICAL LEAVES

After completing seven consecutive full school years of service, a certificated employee will be eligible to apply for a one-semester or one-year sabbatical leave of absence.

Applicants for sabbatical leave must submit their request to the Homan Resources Office on the appropriate form by no later than November 1st of the school year preceding the school year for which the leave is requested. Unusual circumstances which cause a delay in application will be considered.

The Assistant Superintendent of Human Resources will verify the completeness of the application, check with the principal or director concerned on the criticality of the position for the coming year, and will forward the completed application and such information to the Sabbatical Leave Committee.

The Sabbatical Leave Committee will consist of eight members. The Assistant Superintendent of Personnel will be a member and secretary of the committee. Seven members will be appointed annually by the exclusive bargaining agent. The committee will be guided by the following criteria:

1. The potential of the leave to improve classroom instruction;
2. The potential to strengthen a subject matter area for which there is a need in the district;
3. The potential of the proposed leave to strengthen the overall district program.

After receiving the committee report, the Superintendent will present his/her recommendation regarding the applications to the Board of Trustees, together with the recommendation of the Sabbatical Leave Committee.

Subsequent to the Superintendent's recommendation, the Board may grant leave based on: (1) the financial status of the district; (2) benefit of the proposed leave to the educational process.

Employees on sabbatical leave will receive one-half of the salary they would have been paid during the period of leave, and the appropriate salary schedule placement which would have been granted had the employee not been on leave. Full fringe benefits and credit for advancement on the salary schedule will be granted to those on leave.

The terms and conditions of the leave shall be agreed upon in writing and shall include, but not be limited to: an identification bond for failure to successfully complete the sabbatical program or to render the necessary post-leave service; a stipulation to a post-leave service of not less than two full years for a full year of leave, and one full year for a one-half year leave; the description of the sabbatical program; and, appropriate reporting procedures as may be designated by the Superintendent.

Legal Reference: (see next page)

SABBATICAL LEAVES (continued)

Legal Reference:
EDUCATION CODE
44966-44973 Leaves of absence for study or travel

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

(cf. 4161/4261/4361 - Leaves)

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

Salary/Compensation

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

1. Active Military Training or Exercises: The employee is granted a temporary military leave of absence to engage in ordered military duty for purposes of active military training, encampment, naval cruises, special exercises, or like activity as a member of the reserve corps or force of the United States Armed Forces, National Guard, or Naval Militia, provided that: (Military and Veterans Code 389, 395, 395.01)

    a. He/she has been employed by the district for at least one year immediately prior to the day the military leave begins.

    b. The ordered duty does not exceed 180 days, including time involved in going to and returning from such duty.

2. Active Military Duty: The employee is on military leave, other than a temporary military leave, to engage in active military duty as a member of the reserve corps or force of the United States Armed Forces, the National Guard, or the Naval Militia, provided that he/she has been employed by the district for at least one year immediately prior to the day the military leave begins. (Military and Veterans Code 389, 395.02)

3. War or Other Emergency: The employee, however long employed by the district, is a member of the National Guard who is engaged in military or naval duty during a state of extreme emergency as declared by the Governor, or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, including travel time to and from such duty. (Military and Veterans Code 395.05)

MILITARY LEAVE (continued)

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

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

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

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

Benefits

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

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

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

Vacation and Sick Leave Accrual

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

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

MILITARY LEAVE (continued)

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

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

Pension Plan Service Credit

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

Employment Status

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

(cf. 4116 - Probationary/Permanent Status)

Reinstatement Rights

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

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4031 - Complaints Concerning Discrimination in Employment)

Any employee who performs active military duty in time of war, national emergency, or United Nations military or police operation has a right to return to his/her position within six months of an honorable discharge or placement on inactive duty. Reinstatement rights shall not be extended to any such employee who fails to return within 12 months after the first date upon which he/she could terminate or could cause to be terminated his/her active service. (Education Code 44800; Military and Veterans Code 395.1)

MILITARY LEAVE (continued)

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

1. For a leave of 30 days or fewer, the employee shall report for duty no later than the beginning of the first full work day following the completion of military service, provided the employee has a period of eight hours to rest following transportation to his/her residence.

2. For a leave of 31-180 days, the employee shall submit a written or verbal application for reinstatement not later than 14 days after the completion of military service.

3. For a leave of more than 180 days, the employee shall submit a written or verbal application for reinstatement within 90 days after the completion of military service.

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

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

(cf. 4032 - Reasonable Accommodation)

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

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

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

MILITARY LEAVE (continued)

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

1. The district's circumstances have so changed as to make such re-employment impossible or unreasonable, such as a reduction in force that would have included the employee. (38 USC 4312; 20 CFR 1002.139)

2. The accommodation, training, or effort described in 38 USC 4313(a)(3), (a)(4), or (b)(2)(B) would impose an undue hardship on the district as defined in 20 CFR 1002.5 or 1002.198. (38 USC 4312; 20 CFR 1002.139)

3. The employee's position was for a brief, nonrecurrent period and there was no reasonable expectation that such employment will continue indefinitely or for a significant period. (38 USC 4312; 20 CFR 1002.139)

4. The employee's cumulative length of absence and length of all previous military leave while employed with the district exceeds five years, excluding those training and service obligations specified in 38 USC 4312(c). (38 USC 4312; 20 CFR 1002.99-1002.103)

5. The employee was separated from military service with a disqualifying discharge or under other than honorable conditions. (Military and Veterans Code 395.1; 20 USC 4304, 4312; 20 CFR 1002.134-1002.138)

Notices

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

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

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

Legal Reference: (see next page)

MILITARY LEAVE (continued)

Legal Reference:

EDUCATION CODE
22850-22856 Pension benefits, STRS members on military leave
44018 Compensation for employees on active military duty
44800 Effect of active military service on status of employees
45059 Employee ordered to military/naval duty - computation of salary
GOVERNMENT CODE
18540 Definition of armed forces
18540.3 Recognized military service
20990-21013 Pension benefits, PERS members on military leave
MILITARY AND VETERANS CODE
146 Events justifying calling of militia into active service
389 Definitions; temporary military leave
394 Nondiscrimination based on military service
395-395.9 Military leave
UNITED STATES CODE, TITLE 38
4301-4334 Uniformed Services Employment and Reemployment Rights Act of 1994
CODE OF FEDERAL REGULATIONS, TITLE 20
1002.1-1002.314 Uniformed Services Employment and Reemployment Rights Act of 1994
COURT DECISIONS
Wright v. City of Santa Clara (1989) 213 Cal. App.3d 1503
Bowers v. San Buenaventura (1977) 75 Cal. App.3d 65
ATTORNEY GENERAL OPINIONS
77 Ops.Cal.Atty.Gen. 209 (1994)
69 Ops.Cal.Atty.Gen. 185 (1986)
63 Ops.Cal.Atty.Gen. 924 (1978)
19 Ops.Cal.Atty.Gen. 132 (1952)
18 Ops.Cal.Atty.Gen. 178 (1951)

Management Resources:

U.S. DEPARTMENT OF LABOR PUBLICATIONS
A Non-Technical Resource Guide to the Uniformed Services Employment and Reemployment Rights Act (USERRA), rev. April 2005
NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS
The Uniformed Services Employment and Reemployment Rights Act (USERRA), NSBA Federal File: Guidance on Federal School Law, 2003
WEB SITES
National Committee for Employer Support of the Guard and Reserve: http://www.esgr.org
National School Boards Association: http://www.nsba.org
U.S. Department of Labor, USERRA: http://www.dol.gov/vets/programs/userra

The district shall not interfere with, restrain, or deny the exercise or attempted exercise by any eligible employee of his/her right to any family care and medical leave or pregnancy disability leave (PDL) provided through the Family and Medical Leave Act (FMLA), the California Family Rights Act (CFRA), or the Fair Employment and Housing Act (FEHA), nor shall it discharge or discriminate or retaliate against any employee for his/her involvement in any inquiry or proceeding related to any leave under any of these laws or his/her opposition to or challenge of any unlawful district practice in relation to any rights granted by any of these laws. (Government Code 12945, 12945.2; 29 USC 2615)

(cf. 4030 - Nondiscrimination in Employment)
(cf. 4032 - Reasonable Accommodation)
(cf. 4033 - Lactation Accommodation)

Definitions

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

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

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

Employee disabled by pregnancy means a woman who, in the opinion of her health care provider, is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of them without undue risk to herself, her pregnancy's successful completion, or other persons; or who is suffering from severe "morning sickness" or needs to take time off for any pregnancy-related condition including, but not limited to, prenatal or postnatal care, bed rest, gestational diabetes, pregnancy-induced hypertension, preeclampsia, post-partum depression, childbirth, loss or end of pregnancy, or recovery from childbirth or loss or end of pregnancy. (2 CCR 7291.2)

Parent means a biological, foster, or adoptive parent/guardian; a stepparent; a legal guardian; or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2611; 29 CFR 825.122)

FAMILY CARE AND MEDICAL LEAVE (continued)

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves either of the following: (Government Code 12945.2; 29 USC 2611; 29 CFR 825.113-825.115)

1. Inpatient care in a hospital, hospice, or residential health care facility

2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:

   a. A period of incapacity of more than three consecutive full days

   b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition

   c. Any period of incapacity due to pregnancy or for prenatal care under FMLA

   d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective

   e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

Spouse means a partner in marriage as defined in Family Code 300. In addition, for purposes of CFRA, 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, 300; 2 CCR 7297.0; 29 CFR 825.122)

Eligibility

The district shall grant FMLA or CFRA leave to eligible employees for any of the following reasons: (Family Code 297.5; Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)

1. The birth of a child of the employee or placement of a child with the employee in connection with the employee's adoption or foster care of the child

2. To care for the employee's child, parent/guardian, or spouse with a serious health condition

3. The employee's own serious health condition that makes him/her unable to perform one or more essential functions of his/her position

FAMILY CARE AND MEDICAL LEAVE (continued)

4. Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent/guardian is a military member on covered active duty or call to covered active duty (or has been notified of an impending call or order to covered active duty)

5. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent/guardian, or next of kin, as defined, of the servicemember

In addition, the district shall grant any pregnant female employee PDL during pregnancy, when she is disabled by pregnancy, childbirth, or any related medical condition. (Government Code 12945; 2 CCR 7291.4)

Terms of Leave

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

This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

In addition, for each pregnancy, a female employee shall be entitled to PDL for the period of the disability not to exceed four months. (Government Code 12945; 2 CCR 7291.9)

PDL shall run concurrently with FMLA leave for disability caused by an employee's pregnancy. At the end of the employee's FMLA leave for disability caused by pregnancy, or at the end of four months of PDL, whichever occurs first, a CFRA-eligible employee may request to take CFRA leave of up to 12 work weeks for the reason of the birth of her child, if the child has been born by this date (e.g., baby bonding), whether or not she or the child has a serious health condition or disability. To the extent allowed by law, CFRA and FMLA leaves shall run concurrently. (Government Code 12945, 12945.2; 2 CCR 7291.13, 7297.6)

Leave taken for the birth or placement of a child must be concluded within the 12-month period beginning on the date of the birth or placement of the child. Such leave does not need to be taken in one continuous period of time. The basic minimum duration of leave for the birth or placement of a child shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (2 CCR 7297.3; 29 USC 2612)

FAMILY CARE AND MEDICAL LEAVE (continued)

Use/Substitution of Paid Leave

An employee shall substitute his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district for any FMLA or CFRA leave not involving his/her own serious health condition or pregnancy disability. For the employee's PDL or FMLA or CFRA leave due to his/her own serious health condition, the employee shall use accrued sick leave pursuant to the collective bargaining agreement and/or Board policy and may use accrued vacation leave and other paid or unpaid time off at his/her option. (Government Code 12945, 12945.2; 2 CCR 7291.11; 29 USC 2612)

(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4161/4261/4361 - Leaves)
(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Intermittent Leave/Reduced Work or Leave Schedule

PDL and family care and medical leave for the serious health condition of an employee or his/her child, parent/guardian, or spouse may be taken intermittently or on a reduced work or leave schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, the district may limit leave increments to the shortest period of time that the district's payroll system uses to account for absences or use of leave, not to be greater than one hour. (2 CCR 7291.9, 7297.3; 29 USC 2612)

The district may require an employee to transfer temporarily to an available alternative position if the employee is pregnant and provides medical certification from her health care provider of the medical need for intermittent leave or leave on a reduced work or leave schedule or if the employee's need for the intermittent leave or leave on a reduced work or leave schedule is foreseeable based on his/her planned medical treatment or that of a family member. This alternative position must have equivalent pay and benefits and must better accommodate recurring periods of leave than the employee's regular job, and the employee must be qualified for the position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work or leave schedule. (2 CCR 7291.8, 7297.3; 29 USC 2612)

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

Request for Leave

An employee shall provide at least verbal notice sufficient to make the district aware of the need to take PDL or family care and medical leave and the anticipated timing and duration of the leave. (2 CCR 7291.17, 7297.4)

FAMILY CARE AND MEDICAL LEAVE (continued)

For family care and medical leave, the employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement; however, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 7297.4)

Based on the information provided by the employee, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. (2 CCR 7297.4)

When the need for the PDL or family care and medical leave is foreseeable, the employee shall provide the district with at least 30 days advance notice before the leave. The employee shall consult with the Superintendent or designee and make a reasonable effort to schedule, subject to the health care provider's approval, any planned appointment or medical treatment or supervision so as to minimize disruption to district operations. (Government Code 12945.2; 2 CCR 7291.17, 7297.4)

When the 30 days notice is not practicable because of a lack of knowledge of when leave will be required to begin, a change in circumstances, a medical emergency, or other good cause, the employee shall provide the district with notice as soon as practicable. (2 CCR 7291.17, 7297.4)

Certification of Health Condition

Within five business days of an employee's request for family care and medical leave for his/her own or his/her child's, parent's/guardian's, or spouse's serious health condition, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (2 CCR 7297.4; 29 CFR 825.305)

The certification shall include the following: (Government Code 12945.2; 2 CCR 7297.0; 29 USC 2613)

1. The date on which the serious health condition began

2. The probable duration of the condition

FAMILY CARE AND MEDICAL LEAVE (continued)

3. If the employee is requesting leave to care for a child, parent/guardian, or spouse with a serious health condition, both of the following:

   a. Statement that the serious health condition warrants the participation of the employee to provide care during a period of the treatment or supervision of the child, parent/guardian, or spouse

   b. Estimated amount of time the health care provider believes the employee needs to care for the child, parent/guardian, or spouse

4. If the employee is requesting leave because of his/her own serious health condition, a statement that due to the serious health condition, he/she is unable to work at all or is unable to perform one or more essential functions of his/her job

5. If the employee is requesting leave for intermittent treatment or on a reduced work or leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

In addition, at the employee's option, the certification may include a diagnosis identifying the serious health condition. (2 CCR 7297.0)

When an employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA/CFRA-eligible, the Superintendent or designee shall notify the employee within five business days whether the leave is FMLA/CFRA-eligible. The Superintendent or designee may also retroactively designate leave as FMLA/CFRA as long as there is no harm to the employee. (29 CFR 825.301)

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

For PDL, the Superintendent or designee shall request that the employee provide certification by a health care provider of the need for leave at the time the employee gives notice of the need for PDL, or within two business days of giving the notice. If the need for PDL is

FAMILY CARE AND MEDICAL LEAVE (continued)

unforeseen, the Superintendent or designee shall request the medical certification within two business days after the leave commences. The Superintendent or designee may request certification at some later date if he/she has reason to question the appropriateness of the leave or its duration. (2 CCR 7291.17)

For PDL that is foreseeable and for which at least 30 days notice has been given, the employee shall provide the medical certification before the leave begins. When this is not practicable, the employee shall provide the certification within the time frame specified by the Superintendent or designee which must be at least 15 days after the request, unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts. (2 CCR 7291.17)

Medical certification for PDL purposes shall include a statement that the employee needs to take the leave because she is disabled by pregnancy, childbirth, or a related medical condition, the date on which the employee became disabled because of pregnancy, and the estimated duration of the leave. (2 CCR 7291.17)

The Superintendent or designee shall not request any genetic information, as defined in 42 USC 2000ff, from any employee or his/her family member except as necessary to comply with a certification requirement for PDL or FMLA/CFRA leave purposes or with the prior written authorization of the employee. Any such genetic information received by the district shall be kept confidential in accordance with law. (42 USC 2000ff-1, 2000ff-5)

If additional PDL or family care and medical leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified for the leave. (Government Code 12945.2; 2 CCR 7291.17; 29 USC 2613)

Fitness for Duty Certification/Release to Return to Work

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

(cf. 4112.4/4212.4/4312.4 - Health Examinations)

The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.

FAMILY CARE AND MEDICAL LEAVE (continued)

Rights to Reinstatement

Upon granting an employee's request for PDL or family care and medical leave, the Superintendent or designee shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (Government Code 12945.2; 2 CCR 7291.10; 29 USC 2614)

However, the district may refuse to reinstate an employee returning from family care and medical leave to the same or a comparable position if all of the following apply: (Government Code 12945.2; 29 USC 2614)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of district employees who are employed within 75 miles of the employee's worksite.

2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.

3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

(cf. 4117.3 - Personnel Reduction)
(cf. 4217.3 - Layoff/Rehire)

The district may refuse to reinstate an employee to the same position after taking PDL if, at the time the reinstatement is requested, the employee would not otherwise have been employed in that position for legitimate business reasons unrelated to the employee's PDL. (2 CCR 7291.10)

Maintenance of Benefits/Failure to Return from Leave

During the period when an employee is on PDL or family care and medical leave, he/she shall maintain his/her status with the district and the leave shall not constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. (Government Code 12945.2; 29 USC 2614)

For up to a maximum of four months for PDL or 12 work weeks for other family care and medical leave, the district shall continue to provide an eligible employee the group health plan coverage that was in place before he/she took the leave. The employee shall reimburse the district for premiums paid during the leave if he/she fails to return to district employment

FAMILY CARE AND MEDICAL LEAVE (continued)

after the expiration of all available leaves and the failure is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond his/her control. (Government Code 12945.2; 2 CCR 7291.11; 29 USC 2614; 29 CFR 825.213)

(cf. 4154/4254/4354 - Health and Welfare Benefits)

In addition, during the period when an employee is on PDL or family care and medical leave, the employee shall be entitled to continue to participate in other employee benefit plans including life insurance, short-term or long-term disability insurance, accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to an unpaid leave taken for any other purpose. However, for purposes of pension and retirement plans, the district shall not be required to make plan payments for an employee during the leave period and the leave period shall not be counted for purposes of time accrued under the plan. (Government Code 12945.2; 2 CCR 7291.11)

Military Family Leave Resulting from Qualifying Exigencies

An eligible employee may take up to 12 work weeks of unpaid leave during the 12-month period established by the district while a military member is on covered active duty or call to covered active duty status for one or more qualifying exigencies. (29 USC 2612; 29 CFR 825.126)

Military member means an employee's spouse, son, daughter, or parent/guardian on covered active duty or call to covered active duty status. (29 CFR 825.126)

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

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

1. Address issues arising from short notice deployment (up to seven calendar days from the date of receipt of call or order of short notice deployment)

2. Attend military events and related activities, such as any official ceremony or family assistance program related to the covered active duty or call to covered active duty status

FAMILY CARE AND MEDICAL LEAVE (continued)

3. Arrange childcare or attend school activities arising from the covered active duty or call to covered active duty, such as arranging for alternative child care, enrolling or transferring a child to a new school, or attending meetings

4. Make or update financial and legal arrangements to address a military member's absence

5. Attend counseling provided by someone other than a health care provider

6. Spend time (up to 15 days of leave per instance) with a military member who is on short-term, temporary, Rest and Recuperation leave during deployment

7. Attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings

8. Care for a military member's parent/guardian who is incapable of self-care when the care is necessitated by the military member's covered active duty

9. Address any other event that the employee and district agree is a qualifying exigency

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

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

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

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

FAMILY CARE AND MEDICAL LEAVE (continued)

Military Caregiver Leave

The district shall grant up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date of leave taken, to an eligible employee to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, an employee must be the spouse, son, daughter, parent/guardian, or next of kin of the covered servicemember. This 26-week period is not in addition to, but rather is inclusive of, the 12 work weeks of leave that may be taken for other FMLA qualifying reasons. (29 USC 2611, 2612; 29 CFR 825.127)

Covered servicemember may be: (29 CFR 825.127)

1. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness

2. A veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran

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

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

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

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

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

FAMILY CARE AND MEDICAL LEAVE (continued)

1. For a current member of the Armed Forces, an injury or illness incurred by the member in the line of duty on active duty, or that existed before the beginning of the member's active duty and was aggravated by the member's service in the line of duty while on active duty in the Armed Forces, and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating

2. For a veteran, an injury or illness incurred or aggravated by the member's service in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, that manifested itself before or after the member became a veteran and that is at least one of the following:

    a. A continuation of a serious injury or illness incurred or aggravated while the veteran was a member of the Armed Forces and rendered him/her unable to perform the duties of his/her office, grade, rank, or rating

    b. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs (VA) Service-Related Disability Rating of 50 percent or greater, based wholly or partly on that physical or mental condition

    c. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of one or more disabilities related to his/her military service or that would do so but for treatment received by the veteran

    d. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the VA's Program of Comprehensive Assistance for Family Caregivers

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

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

The leave may be taken intermittently or on a reduced work or leave schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26

FAMILY CARE AND MEDICAL LEAVE (continued)

work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

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

Notifications

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

1. **General Notice:** Information explaining the provisions of the FEHA and FMLA/CFRA and employee rights and obligations shall be posted in a conspicuous place on district premises, or electronically, and shall be included in employee handbooks. (2 CCR 7291.16, 7297.9; 29 USC 2619)

   The general notice shall also explain an employee's obligation to provide the Superintendent or designee with at least 30 days notice of the need for the leave, when the need for the leave is reasonably foreseeable. (2 CCR 7291.17, 7297.4)

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

2. **Eligibility Notice:** When an employee requests leave, including PDL, or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall, within five business days, provide notification to the employee of his/her eligibility to take such leave. (2 CCR 7291.16; 29 CFR 825.300)

3. **Rights and Responsibilities Notice:** Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as appropriate: (29 CFR 825.300)

   a. A statement that the leave may be designated and counted against the employee's annual FMLA/CFRA leave entitlement and the appropriate 12-month entitlement period, if qualifying

FAMILY CARE AND MEDICAL LEAVE (continued)

b. Any requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification

c. The employee's right to substitute paid leave, whether the district will require substitution of paid leave, conditions related to any substitution, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave

d. Any requirements for the employee to make premium payments necessary to maintain health benefits, the arrangement for making such payments, and the possible consequences of failure to make payments on a timely basis

e. If applicable, the employee's status as a "key employee," potential consequence that restoration may be denied following the FMLA leave, and explanation of the conditions required for such denial

f. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave

g. The employee's potential liability for health insurance premiums paid by the district during the employee's unpaid FMLA leave should the employee not return to service after the leave

Any time the information provided in the above notice changes, the Superintendent or designee shall, within five business days of his/her receipt of an employee's first notice of need for leave, provide the employee with a written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

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

If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice,

FAMILY CARE AND MEDICAL LEAVE (continued)

notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

If the district requires paid leave to be substituted for unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a fitness-for-duty certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify that requirement. (29 CFR 825.300)

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

Records

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

Legal Reference: (see next page)

FAMILY CARE AND MEDICAL LEAVE (continued)

Legal Reference:

EDUCATION CODE
44965 Granting of leaves of absence for pregnancy and childbirth
FAMILY CODE
297-297.5 Rights, protections, and benefits under law; registered domestic partners
300 Validity of marriage
GOVERNMENT CODE
12940 Unlawful employment practices
12945 Pregnancy; childbirth or related medical condition; unlawful practice
12945.1-12945.2 California Family Rights Act
12946 Fair Employment and Housing Act: discrimination prohibited
CODE OF REGULATIONS, TITLE 2
7291.2-7291.17 Sex discrimination: pregnancy and related medical conditions
7297.0-7297.11 Family care leave
UNITED STATES CODE, TITLE 1
7 Definition of marriage
UNITED STATES CODE, TITLE 29
2601-2654 Family and Medical Leave Act of 1993, as amended
UNITED STATES CODE, TITLE 42
2000ff-1-2000ff-11 Genetic Information Nondiscrimination Act of 2008
CODE OF FEDERAL REGULATIONS, TITLE 29
825.100-825.800 Family and Medical Leave Act of 1993
COURT DECISIONS
United States v. Windsor, (2013) 699 F.3d 169
Re Marriage Cases, (2008) 43 Cal.4th 757
Faust v. California Portland Cement Company, (2007) 150 Cal.App.4th 864
Tellis v. Alaska Airlines, (9th Cir., 2005) 414 F.3d 1045

Management Resources:

FEDERAL REGISTER
The Family and Medical Leave Act; Final Rule; February 6, 2013. Vol. 78, No. 25, pages 8903-8947
U.S. DEPARTMENT OF LABOR PUBLICATIONS
Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers
WEB SITES
California Department of Fair Employment and Housing: http://www.dfeh.ca.gov
U.S. Department of Labor, FMLA: http://www.dol.gov/whd/fmla

All Personnel BP 4161.9
4261.9

CATASTROPHIC LEAVE PROGRAM 4361.9

When a catastrophic illness or injury incapacitates an employee or a member of his/her family for an extended period of time and the employee has exhausted all paid leaves of absence, other employees may donate accrued vacation and/or sick leave credits to that employee under the specific requirements of the district's catastrophic leave program.

Donations made under the catastrophic leave program shall be strictly voluntary.

(cf. 4161/4261/4361 - Leaves)
(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Legal Reference:
EDUCATION CODE
44043.5 Catastrophic leave

Policy adopted:

SAN LEANDRO UNIFIED SCHOOL DISTRICT
San Leandro, California

When an employee or a member of his/her family experiences a catastrophic illness or injury which requires the employee to take time off from work for an extended period of time, and the employee has exhausted all available sick leave and other paid time off, he/she may request donations of accrued vacation or sick leave credits. (Education Code 44043.5)

In making such a request, the employee shall provide verification of the catastrophic injury or illness. (Education Code 44043.5)

Verification shall be made by means of a letter, dated and signed by the sick or injured person's physician, indicating the incapacitating nature and probable duration of the illness or injury.

Upon determination that the employee is unable to work due to his/her own or a family member's catastrophic illness or injury, any other employee, upon written notice to the Board of Trustees, may donate accrued vacation and/or sick leave credits to the requesting employee. Donations shall be at a minimum of eight hours, and in hour increments thereafter. (Education Code 44043.5)

To ensure that employees retain sufficient accrued sick leave to meet their own needs, donors shall not reduce their accumulated sick leave to fewer than 10 days.

All transfers of eligible leave credit shall be irrevocable. (Education Code 44043.5)

The Superintendent or designee shall ensure that all donations are confidential.

The employee who is the recipient of the donated leave credits shall use those credits within 12 consecutive months.

If donated credits are not used by the employee within 12 consecutive months, the credits shall be placed in a pool that will be available to the next eligible employee who requests catastrophic leave.

An employee who receives paid catastrophic leave shall use any leave credits that he/she continues to accrue on a monthly basis before receiving paid leave pursuant to this program. (Education Code 44043.5)