

Regulation 4361.1: Personal Illness/Injury Leave Status: ADOPTED

Original Adopted Date: 03/01/2017 | **Last Revised Date:**
06/01/2024 | **Last Reviewed Date:** 06/01/2024

The following administrative regulation applies to classified employees, including classified management. For certificated employees, including certificated management, see Administrative Regulation 4161.1/4361.1 – Personal Illness/Injury Leave.

Certificated employees employed five school days per week are entitled to 10 days leave of absence with full pay for personal illness or injury (sick leave) per school year of service. Employees who work less than five school days per week (part-time employees) shall be granted sick leave in proportion to the time they work. However, any part-time employees who are entitled to less than three days of paid sick leave per year due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246, if they are eligible. (Education Code 44978; Labor Code 245-249)

Use of Sick Leave

A certificated employee may use sick leave for absences as authorized by law and/or collective bargaining agreement, including, but not limited to:

1. Accident or illness, whether or not the absence arises out of and in the course of employment; quarantine which results from contact in the course of employment with other persons having a contagious disease; or temporary inability to perform assigned duties because of illness, accident, or quarantine (Education Code 44964)
2. Pregnancy, miscarriage, childbirth, and related recovery, as well as reproductive loss (Education Code 44965, 44978; Government Code 12945.6)
3. Personal necessity (Education Code 44981)
4. Medical and dental appointments, in increments of not less than one hour
5. Industrial accidents or illnesses when leave granted specifically for that purpose has been exhausted (Education Code 44984)
6. Need of the employee to bond with a child within one year of the child's birth, adoption, or foster care placement (parental leave) (Education Code 44977.5; Government Code 12945.2; 29 USC 2612; 29 CFR 825.112)

7. Need of the employee or employee's family member, including a designated person, as defined in Labor Code 245.5, for the diagnosis, care, or treatment of an existing health condition or for preventive care (Government Code 12945.2; Labor Code 233, 246.5)
 8. Need of the employee to seek or obtain any relief or medical attention specified in Labor Code 230(c) and 230.1(a) for the health, safety, or welfare of the employee or the employee's child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 233, 246.5)
 9. Bereavement leave, as specified in Administrative Regulation 4161.2/4261.2/4361.2 - Personal Leaves (Education Code 44985; Government Code 12945.7)
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For the purposes specified in Items #7-8, an employee may use, in any calendar year, the amount of sick leave that would be accrued during six months at the employee's then current rate of entitlement. (Labor Code 233)

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

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

An employee shall reimburse the district for any unearned sick leave used as of the date of termination, in accordance with Education Code 44042.5.

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

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

The Superintendent or designee shall notify any certificated employee who leaves the district after at least one school year of employment that if the employee accepts a certificated position in another district, county office of education, or community college district within one year, the employee may request that the district transfer any accumulated sick leave to the new employer. (Education Code 44979, 44980)

Additional Leave for Disabled Military Veterans

In addition to any other entitlement for sick leave with pay, a certificated employee who is a former active duty member of the U.S. Armed Forces or a former or current member of the California National Guard or a federal reserve component shall be entitled to sick leave with pay of up to 10 days for the purpose of undergoing medical treatment, including mental health treatment, for a military service-connected disability rated at 30 percent or more by the U.S. Department of Veterans Affairs. An eligible employee who works less than five days per week shall be entitled to such leave in proportion to the time worked. (Education Code 44978.2)

The amount of leave shall be credited to the employee either on the date the employee receives

confirmation of the submission of the disability application to the U.S. Department of Veterans Affairs or on the first day the employee begins or returns to employment after active duty, whichever is later. When the employee receives the disability rating decision, the employee shall report that information to the Superintendent or designee. If the disability rating decision makes the employee eligible for the leave, the time used before the decision shall be counted toward the 10-day maximum leave. If the disability rating decision makes the employee ineligible for the leave, the district may change the sick leave time used before the disability rating decision to an alternative leave balance. (Education Code 44978.2)

The Superintendent or designee may require verification, in accordance with the section "Verification Requirements" below, that the employee used the leave to obtain treatment of a military service-connected disability.

Leave for military-service connected disability shall be available for 12 months following the first date that the leave was credited. Leave not used during the 12-month period shall not be carried over and shall be forfeited. (Education Code 44978.2)

Notification of Absence

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

Continued Absence After Available Sick Leave Is Exhausted/Differential Pay

After a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or accident, continues to be absent for an additional period of up to five months, the employee shall receive at least 50 percent of the employee's regular salary during the additional period of absence. (Education Code 44983)

Absence Beyond Five-Month Period/Reemployment List

If a certificated employee is not medically able to return to work after the five-month period provided pursuant to Education Code 44977, the employee shall be placed either in another position or on a reemployment list. Placement on the reemployment list shall be for 24 months for probationary employees or 39 months for permanent employees and shall begin at the expiration of the five-month period. If during this time the employee becomes medically able, the employee shall be returned to employment in a position for which the employee is credentialed and qualified. (Education Code 44978.1)

Parental Leave

During each school year, a certificated employee may use all available sick leave, including accumulated sick leave, for the purpose of parental leave for a period of up to 12 work weeks. The 12-week period shall be reduced by any period of sick leave, including accumulated sick leave,

taken during a period of such parental leave. (Education Code 44977.5)

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

An employee who has exhausted all available sick leave, including accumulated sick leave, and continues to be absent on account of parental leave shall receive differential pay of at least 50 percent of the employee's regular salary for the remainder of the 12 work weeks. (Education Code 44977.5)

Parental leave taken pursuant to Education Code 44977.5 shall run concurrently with the parental leave taken pursuant to Government Code 12945.2 or 12945.6, and the aggregate amount of parental leave shall not exceed 12 work weeks in a 12-month period. (Education Code 44977.5; Government Code 12945.2, 12945.6)

Verification Requirements

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

The Superintendent or designee may require verification whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever available evidence clearly indicates that an absence is not related to illness or injury.

In addition, the 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 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.

Any district request for additional verification by an employee's physician or a district-selected physician shall be in writing and shall specify that the report to be submitted to the district should not contain the employee's genetic information. Any genetic information received by the district on behalf of an employee shall be treated as a confidential medical record, maintained in a file separate from the employee's personnel file, and not be disclosed except in accordance with 29 CFR 1635.9.

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

Healthy Workplaces, Healthy Families Act Requirements

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

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

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

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1. That an employee is entitled to accrue, request, and use paid sick days
 2. The number of sick days provided by Labor Code 245-249
 3. The terms of use of paid sick days
 4. That discrimination or retaliation against an employee for requesting and/or using sick leave is prohibited by law and that an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against the employee
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2. Provide at least 40 hours or five days of paid sick leave to each eligible employee to use per year and allow eligible employees to use accrued sick leave upon reasonable request
 3. Provide eligible employees written notice, on their pay stub or other document issued with their pay check, of the amount of paid sick leave they have available
 4. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years
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State	Description
5 CCR 5601	Transfer of accumulated sick leave
Ed. Code 44042.5	<u>Wage overpayment</u>
Ed. Code 44964	<u>Power to grant leaves of absence for accident, illness, or quarantine</u>
Ed. Code 44965	<u>Granting of leaves of absence for pregnancy and childbirth</u>
Ed. Code 44976	<u>Transfer of leave rights when school is transferred to another district</u>
Ed. Code 44977	<u>Salary schedule for substitute employees</u>
Ed. Code 44977.5	<u>Differential pay during parental leave up to 12 weeks after sick leave is exhausted</u>
Ed. Code 44978	<u>Sick leave; certificated employees</u>
Ed. Code 44978.1	<u>Inability to return to duty; placement in another position or on reemployment list</u>
Ed. Code 44978.2	<u>Leave for military service-connected disability</u>
Ed. Code 44979	<u>Transfer of accumulated sick leave to another district</u>
Ed. Code 44980	<u>Transfer of accumulated sick leave to a county office of education</u>
Ed. Code 44981	<u>Leave of absence for personal necessity</u>
Ed. Code 44983	<u>Compensation during leave; certificated employees</u>
Ed. Code 44984	<u>Required rules for industrial accident and illness leave</u>
Ed. Code 44985	<u>Leave of absence due to death in immediate family; certificated</u>
Ed. Code 44986	<u>Leave of absence; state disability benefits</u>
Ed. Code 45194	<u>Bereavement leave of absence; classified</u>
Gov. Code 12945.1-12945.21	<u>California Family Rights Act</u>
Gov. Code 12945.6	Reproductive loss leave
Gov. Code 12945.7	Bereavement leave
Lab. Code 220	<u>Sections inapplicable to public employees</u>

Lab. Code 230
Lab. Code 230.1

Lab. Code 233
Lab. Code 234
Lab. Code 245-249

Federal

20 USC 1681-1688

29 CFR 1635.1-1635.12
29 CFR 825.100-825.702
29 USC 2601-2654
34 CFR 106.1-106.82
42 USC 2000ff-2000ff-11

Management Resources

Court Decision

Website

Code

2121
4032
4112.2
4112.2
4112.42
4112.42
4112.9
4112.9-E(1)
4113.4
4113.5
4116
4116
4117.11
4119.41
4121
4121
4141.6
4141.6
4154
4154
4157.1
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4161
4161
4161.11
4161.2
4161.5
4161.8
4161.9
4161.9
4212.42
4212.42
4212.9
4212.9-E(1)
4213.4
4213.5
4219.41
4241.6
4241.6
4254
4254

Accommodations and leave for victims of domestic violence
Employers with 25 or more employees; domestic violence, sexual assault, and stalking victims; right to time off

Leave to attend to family illness

Absence control policy

Healthy Workplaces, Healthy Families Act of 2014

Description

Title IX of the Education Amendments of 1972; discrimination based on sex

Genetic Information Nondiscrimination Act of 2008

Family and Medical Leave Act of 1993

Family Care and Medical Leave Act

Discrimination on the basis of sex; effectuating Title IX

Genetic Information Nondiscrimination Act of 2008

Description

Veguez v. Governing Board of Long Beach Unified School

District (2005) 127 Cal.App.4th 406

CSBA District and County Office of Education Legal Services

Description

Superintendent's Contract

Reasonable Accommodation

Certification

Certification

Drug And Alcohol Testing For School Bus Drivers

Drug And Alcohol Testing For School Bus Drivers

Employee Notifications

Employee Notifications

Temporary Modified/Light-Duty Assignment

Working Remotely

Probationary/Permanent Status

Probationary/Permanent Status

Preretirement Part-Time Employment

Employees With Infectious Disease

Temporary/Substitute Personnel

Temporary/Substitute Personnel

Concerted Action/Work Stoppage

Concerted Action/Work Stoppage

Health And Welfare Benefits

Health And Welfare Benefits

Work-Related Injuries

Employee Assistance Programs

Leaves

Leaves

Industrial Accident/Illness Leave

Personal Leaves

Military Leave

Family Care And Medical Leave

Catastrophic Leave Program

Catastrophic Leave Program

Drug And Alcohol Testing For School Bus Drivers

Drug And Alcohol Testing For School Bus Drivers

Employee Notifications

Employee Notifications

Temporary Modified/Light-Duty Assignment

Working Remotely

Employees With Infectious Disease

Concerted Action/Work Stoppage

Concerted Action/Work Stoppage

Health And Welfare Benefits

Health And Welfare Benefits

4257.1	<u>Work-Related Injuries</u>
4259	<u>Employee Assistance Programs</u>
4261	<u>Leaves</u>
4261	<u>Leaves</u>
4261.11	<u>Industrial Accident/Illness Leave</u>
4261.2	<u>Personal Leaves</u>
4261.5	<u>Military Leave</u>
4261.8	<u>Family Care And Medical Leave</u>
4261.9	<u>Catastrophic Leave Program</u>
4261.9	<u>Catastrophic Leave Program</u>
4312.42	<u>Drug And Alcohol Testing For School Bus Drivers</u>
4312.42	<u>Drug And Alcohol Testing For School Bus Drivers</u>
4312.9	<u>Employee Notifications</u>
4312.9-E(1)	<u>Employee Notifications</u>
4313.4	<u>Temporary Modified/Light-Duty Assignment</u>
4313.5	<u>Working Remotely</u>
4317.11	<u>Preretirement Part-Time Employment</u>
4319.41	<u>Employees With Infectious Disease</u>
4354	<u>Health And Welfare Benefits</u>
4354	<u>Health And Welfare Benefits</u>
4357.1	<u>Work-Related Injuries</u>
4359	<u>Employee Assistance Programs</u>
4361	<u>Leaves</u>
4361	<u>Leaves</u>
4361.11	<u>Industrial Accident/Illness Leave</u>
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4361.5	<u>Military Leave</u>
4361.8	<u>Family Care And Medical Leave</u>
4361.9	<u>Catastrophic Leave Program</u>
4361.9	<u>Catastrophic Leave Program</u>