

Administrative Regulation

Personnel

AR 4161.2 4261.2, 4361.2

Personal Leaves

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

Note: Effective January 1, 2005, Family Code 297.5, as added by AB 205 (Ch. 421, Statutes of 2003), extends to registered domestic partners the same rights that are available under state law to spouses. However, the Education Code was not amended to reflect this new legislation. Districts should consult legal counsel if a question arises as to leave provisions relative to an employee's domestic partner.

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

Bereavement

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

Employees are entitled to a leave of up to three days, or five days if out-of-state travel is required, upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)
(cf. 4161/4261 - Leaves)
(cf. 4361 - Leaves)

Members of the immediate family include the mother, father, grandmother, grandfather or grandchild of the employee or of the employee's spouse; the employee's spouse, son, son-in-law, daughter, daughter-in-law, brother or sister; or any relative living in the employee's immediate household. (Education Code 44985, 45194)

At the employee's request, bereavement leave may be extended under personal necessity leave provisions. (Education Code 44981, 45207)

Personal Necessity

Note: Employees may use a maximum of seven days of accumulated sick leave for reasons of personal necessity pursuant to Education Code 44981 (certificated employees) and 45207 (classified employees). Pursuant to Education Code 44981, a higher maximum may be set for certificated employees if specified in a collective bargaining agreement. AB 1038 (Ch. 843, Statutes of 2003) amended Education Code 45207 to similarly allow a higher maximum to be set for classified employees if specified in a collective bargaining agreement or, if there is no exclusive representative, in a Board resolution. Districts that have bargained for a higher maximum number of days should modify the following paragraph accordingly.

Employees may use up to seven days of their accrued sick leave during each contract year for reasons of personal necessity. (Education Code 44981, 45207)
(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)
(cf. 4261.1 - Personal Illness/Injury Leave)

Acceptable reasons for the use of personal necessity leave include:

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

***Note: Education Code 44981 provides that a certificated employee may use personal necessity leave for the serious illness of a member of his/her immediate family. The Board may extend these provisions to classified employees under the authority granted to the Board by Education Code 45207. Districts are cautioned to consult legal counsel regarding any interaction of Education Code provisions with Labor Code 233, which states that any employer who provides sick leave for employees must permit employees to use sick leave to attend to the illness of a child, parent, spouse, domestic partner or domestic partner's child. See AR 4161.1/4361.1 - Personal Illness/Injury Leave and AR 4261.1 - Personal Illness/Injury Leave. Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for federal and state provisions related to leaves for the birth, adoption or foster placement of a new child; the care of a seriously ill child, parent or spouse; or the employee's own serious health condition. ***

3. A serious illness of a member of the certificated employee's immediate family (Education Code 44981)
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)

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

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

***Note: Items #5 and 6 are optional and may be deleted or modified as desired. ***

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 true personal necessity.

Note: AB 1038 (Ch. 843, Statutes of 2003) amended Education Code 45207 to provide that the district cannot require a classified employee to secure advance permission for leave taken under the circumstances described below. If the district has extended to classified employees the same rights granted to certificated employees to use personal necessity leave for the serious illness of a family member (see above), the district may choose to modify the last sentence of the following paragraph so as not to require advance permission for classified employees under those circumstances.

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

Note: Education Code 44981 and 45207 mandate the adoption of rules and regulations requiring and prescribing the manner of proof of personal necessity. The following paragraph may be revised to fulfill this mandate.

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

Legal Duties

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

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

Certificated employees also shall be granted leave for jury duty with pay up to the amount of the difference between the employee's regular earnings and any amount received as juror's fees.

***Note: Labor Code 230 prohibits the discharge of or discrimination or retaliation against an employee for taking time off for the following activities. ***

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.

Leaves for Crime Victims

Note: The following section reflects the provisions of Labor Code 230.2, added by SB 478 (Ch. 630, Statutes of 2003). Labor Code 230.2 prohibits employers from taking adverse employment action against employees who take leave as described below.

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

1. A violent felony as defined in Penal Code 667.5(c)
2. A serious felony as defined in Penal Code 1192.7(c)
3. A felony provision of law proscribing theft or embezzlement

Note: Pursuant to Labor Code 230.2, employees may use any of the types of leave listed in the following paragraph, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of any employee. The district should modify the following paragraph as necessary to reflect the terms of its collective bargaining agreement(s).

For these purposes, the employee may use vacation, personal leave, sick leave, compensatory time off that is otherwise available to the employee, or unpaid leave. (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 supervisor and Superintendent or designee shall keep confidential any records pertaining to the employee's absence from work. (Labor Code 230.2)

Leaves for Victims of Domestic Violence or Sexual Assault

***Note: Labor Code 230 prohibits employers from taking adverse employment action against victims of sexual assault or domestic violence who takes leave as described in the following section. ***

An employee who is a victim of domestic violence or sexual assault as defined by law may take time off work to 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. (Labor Code 230)

Note: Labor Code 230.1 requires districts with 25 or more employees to grant time off to employees who are victims of sexual assault or domestic violence for the following additional reasons. Districts with fewer than 25 employees should delete items #1-4 below.

In addition, an employee who is a victim of domestic violence or sexual assault may take time off work to attend to the following activities: (Labor Code 230.1)

1. Seek medical attention for injuries caused by domestic violence or sexual assault
2. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault
3. Obtain psychological counseling related to an experience of domestic violence or sexual assault
4. Participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation

Note: The remainder of this section applies to all districts. Pursuant to Labor Code 230 and 230.1, employees may use any of the types of leave listed in the following paragraph, unless otherwise provided by a collective bargaining agreement, although a collective bargaining agreement cannot diminish the entitlement of any employee. The district should modify the following paragraph as necessary to reflect the terms of its collective bargaining agreement(s).

An employee who is a victim of domestic violence or sexual assault may use vacation, personal leave or compensatory time off that is otherwise available to the employee under the applicable terms of employment. (Labor Code 230, 230.1)

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 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 supervisor and Superintendent or designee shall maintain the confidentiality of such an employee to the extent authorized by law. (Labor Code 230, 230.1)

Personal Leave for a Child's School Activities

***Note: Pursuant to Labor Code 230.8, the following section applies to districts employing 25 or more employees at the same location. Districts with fewer than 25 employees at the same location should delete this section. ***

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

(cf. 1240 - Volunteer Assistance)

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

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

If both parents of a child are employed at the same work site, this leave shall be allowed for the first parent who applies; simultaneous absence by the second parent 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)

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

Service on Education Boards, Committees and State or Employee Organizations

Employees shall be granted up to 20 school days of paid leave per school year for service performed within the state on any education boards, commissions, committees or groups authorized by Education Code 44987.3 or statute, provided that all of the following conditions are met: (Education Code 44987.3)

1. The service is in the state of California.
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 service, to reimburse the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs.

***Note: Education Code 44987 and 45210 provide that certificated and classified employees may take time off without loss of compensation to serve as elected officers of their local, statewide or national employee organization. Following the district's payment to the employee for the leave of absence, the employee organization must reimburse the district. This leave of absence is in addition to the release time granted to representatives of an employee organization granted by Government Code 3543.1. ***

Employees may take 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 local 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)

Leave for Emergency Duty

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

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

Note: Labor Code 230.4 requires a district with 50 or more employees to grant an employee who is a volunteer firefighter temporary leaves of absence for up to 14 days per calendar year for activities as specified below. Districts with fewer than 50 employees should delete this paragraph.

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)

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)

FAMILY CODE

- 297.5 Domestic partner rights

GOVERNMENT CODE

- 3543.1 Release time for representatives of employee organizations

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

PENAL CODE

- 667.5 Violent felony, defined
- 1192.7 Serious felony, defined

CALIFORNIA CONSTITUTION

- Article 1, Section 8 Religious discrimination

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

Management Resources:

WEB SITES

- California Teachers Association: <http://www.cta.org>
 - California Federation of Teachers: <http://www.cft.org>
 - California School Employees Association: <http://www.csea.com>
- (11/00 11/02) 11/03

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**GRAVENSTEIN UNION SCHOOL DISTRICT
Sebastopol, California**