



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority  
serving school and  
college districts  
throughout the state.*

5350 Skylane Boulevard  
Santa Rosa, CA 95403

Tel: (707) 524-2690  
Fax: (707) 578-0517  
santarosa@sclscal.org  
www.sclscal.org

*General Counsel*  
Carl D. Corbin

*Attorneys*  
Ellie R. Austin  
Monica D. Batanero  
Nancy L. Klein  
Damara L. Moore  
Jennifer E. Nix  
Steven P. Reiner  
Mia N. Robertshaw  
Loren W. Soukup  
Erin E. Stagg  
Frank Zotter, Jr.

*Of Counsel*  
Robert J. Henry  
Margaret M. Merchat

October 12, 2017

**To: Superintendents, Member School Districts (K-12)**

**From: Mia N. Robertshaw** *MNR*  
**Associate General Counsel**

**Subject: Employees' Use of Leaves for Fire-Related Absences**  
**Memo No. 24-2017**

---

This Legal Update outlines which leaves may be used for fire-related absences. Districts should refer to their own board policies, administrative regulations, and collective bargaining agreements which may differ from the information in this Legal Update, and which may allow for leaves that are not addressed here. Recommendations are set forth at the end of this Legal Update. Please be aware that changes to leaves must be negotiated with the exclusive representative.

### **Personal Necessity Leave**

By law, certificated and classified employees may use up to seven days of their sick leave each year for "cases of personal necessity."<sup>1</sup> The law provides that no more than seven day of sick leave may be used for personal necessity *unless* the collective bargaining agreement allows it<sup>2</sup> or, for unrepresented classified employees, board policy allows it.<sup>3</sup>

Depending on a district's rules governing personal necessity leave, it is very likely that such leave would cover many fire-related reasons for which employees may have to be absent from work.

A certificated employee is not required to secure advanced permission for leave taken for 1) death or serious illness of a member of the employee's immediate family; or 2) accident involving the employee's person or property or the person or property of a member of the employee's immediate family.<sup>4</sup> Other permissible

---

<sup>1</sup> Education Code §§ 44981 (certificated), 45207 (classified).

<sup>2</sup> Education Code §§ 44981 (certificated), 45207 (classified).

<sup>3</sup> Education Code § 45207.



uses of personal necessity leave are specified in board policies, administrative regulations, and collective bargaining agreements.

A classified employee may use personal necessity leave for: 1) death of an immediate family member; 2) accident involving the employee's person or property or the person or property of a member of the employee's immediate family; 3) appearance in court or an administrative tribunal in certain circumstances; or 4) other reasons allowed by a collective bargaining agreement, board policy, or administrative regulation.

### **Vacation Leave**

Employees who earn vacation leave could utilize such leave for fire-related absences.

### **Catastrophic Leave**

A catastrophic leave program allows employees to donate eligible leave credits to another employee when that employee or a member of his or her family suffers a catastrophic illness or injury.<sup>5</sup> The Education Code sets parameters for catastrophic leave programs but also allows districts to bargain different requirements with district's employees' exclusive representative. Catastrophic leave programs that follow the Education Code's parameters likely would not cover leave for fire-related absences other than those resulting from fire-related illnesses or injuries.

### **Sick Leave and Family Medical Leave**

Employees who are injured or suffer an illness as a result of the fires would be eligible for sick leave and extended illness leave (differential leave) to which they would be entitled for any illness or injury.

Similarly, an employee who is injured or suffers an illness as a result of the fires, or whose immediate family member is injured or taken ill, would be eligible for leave under the Family Medical Leave Act and California Family Rights Act as they would be for any illness or injury.

### **Bereavement Leave**

Employees who suffer the terrible tragedy of a loved one passing away because of the fires would be eligible for bereavement leave. By law, employees are entitled to leave of up to three days, or five days if out-of-state travel is required, upon the death of an immediate family member.<sup>6</sup> The law defines immediate family members but districts may use more expansive definitions. This leave is not deducted from an employee's other leaves.

---

<sup>4</sup> Education Code § 44981.

<sup>5</sup> Education Code § 44043.5.

<sup>6</sup> Education Code §§ 44985 (certificated), 45194 (classified).



## **Leave for Emergency Duty**

Employees may take leave to perform emergency duties as a volunteer firefighter or emergency rescue personnel.<sup>7</sup> Please contact our office for more information regarding this leave if it is relevant to your district.

## **Additional Paid or Unpaid Leave**

A district governing board has the discretion to grant leaves of absence, paid or unpaid, in addition to leaves to which an employee is entitled by law, board policy, or a collective bargaining agreement.<sup>8</sup>

## **Recommendations**

If a district wishes to offer fire-related leave to its employees beyond what is available to employees currently (such as personal necessity leave, or sick leave), we recommend that a district consider one or more of the following solutions on a temporary, non-precedential basis:

1. Temporary increase to personal necessity leave from accumulated sick leave: Enter memoranda of understanding with the union(s) or pass a Board resolution for unrepresented employees to allow employees to utilize additional days of sick leave as personal necessity leave, such as allowing up to fifteen days of personal necessity leave rather than seven. We have outlined recommended parameters for such leave below.
2. Temporary fire relief leave bank: Enter memoranda of understanding with the union(s) or pass a Board resolution for unrepresented employees to create a temporary leave bank similar to *but separate from* a catastrophic leave bank to allow employees to donate sick leave or vacation leave to other employees in need of leave time. A district could have three separate banks for certificated, classified, and unrepresented employees, or one or two banks combining those groups with the agreement of the certificated and classified unions. We have outlined recommended parameters for such leave below.

In either scenario, the parameters for when and how such leave will be granted should be clearly outlined. Please be aware that either of these options, or any other changes to leaves, must be negotiated with the union(s). Please contact our office for assistance drafting a memorandum of understanding for either of the recommended options.

## **Temporary Increase to Personal Necessity Leave from an Employee's Accumulated Sick Leave**

For a temporary increase to personal necessity leave from an employee's accumulated sick leave, recommended parameters include such issues as:

1. how many days of personal necessity leave may be taken;
2. how much notice an employee must give;

---

<sup>7</sup> Labor Code § 230.3; *see also* Labor Code §§ 1500-1507.

<sup>8</sup> Education Code §§ 44963 (certificated), 45190 (classified).



3. whether the leave is subject to approval by the supervisor;
4. during what time period may the leave be used (*i.e.*, during October and November 2017 only);
5. clarify whether the days include or are in addition to personal necessity leave to which an employee is typically entitled (*i.e.*, is it fifteen days total for the year, at least eight of which must be used in October and November 2017, or is it fifteen days plus the seven which an employee typically has);
6. clarify whether employees must disclose the reason for the leave; and
7. clarify if the leave is limited to use for fire-related absences only.

### Temporary Fire Relief Leave Bank

For a temporary fire relief leave bank, recommended parameters include such issues as:

1. how many days of sick leave or vacation leave may be donated;
2. how much leave an employee must have remaining after donating time;
3. in what increments time may be donated;
4. who is eligible to donate leave (classified, certificated, unrepresented, or all employees);
5. clarify that donations are irrevocable;
6. specify what will happen with any donated days that are not used;
7. whether donations may be made to a specific employee or must be made to a bank (we recommend a bank rather than donations to specific individuals);
8. how many days of leave may be utilized by any one employee;
9. when is an employee eligible to use of the leave;
10. what leaves must be exhausted before an employee is eligible for donated leave (for example, must the employee utilize all personal necessity leave and all sick leave up to a set number of days remaining?);
11. how eligibility for such leave will be determined, and by whom;
12. clarify whether employees must disclose the reason for the leave;
13. specify that the leave is limited to use for fire-related absences only; and
14. during what time period may the leave be used (*i.e.*, during October and November 2017 only).

Again, please contact our office for assistance drafting a memorandum of understanding for either of the recommended options.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

© 2017 School and College Legal Services of California

*All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.*