ILLNESS LEAVE FOR REGULAR CLASSIFIED EMPLOYEES

Education Code Sections

88191. Leave of Absence for Illness or Injury. Every classified employee employed five days a week by a community college district shall be entitled to 12 days leave of absence for illness or injury and such additional days, in addition thereto, as the governing board may allow for illness or injury, exclusive of all days the employee is not required to render service to the district, with full pay for a fiscal year of service.

A classified employee, employed five days a week, who is employed for less than a full fiscal year, is entitled to that proportion of 12 days leave of absence for illness or injury as the number of months the employee is employed bears to 12 and the proportionate amount, consistent with this formula, of such additional days, in addition thereto, authorized by the governing board for classified employees employed five days a week for a full fiscal year of service.

A classified employee employed less than five days per week shall be entitled, for a fiscal year of service, to that proportion of 12 days leave of absence for illness or injury as the number of days the employee is employed per week bears to five and is entitled to the proportionate amount, consistent with this formula, of such additional days, in addition thereto, authorized by the governing board for classified employees employed five days a week for a full fiscal year of service.

When these persons are employed for less than a full fiscal year of service, this and the preceding paragraph shall determine that proportion of leave of absence for illness or injury to which they are entitled.

Pay for any day of such absence shall be the same as the pay which would have been received had the employee served during the day. Credit for leave of absence need not be accrued prior to taking that leave by the employee and such leave of absence may be taken at any time during the year. However, a new employee of a district shall not be eligible to take more than six days, or the proportionate amount to which the employee may be entitled under this section, until the first day of the calendar month after completion of six months of active service with the district.

If the employee does not take the full amount of leave allowed in any year under this section, the amount not taken shall be accumulated from year to year with such additional days as the governing board may allow.
The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purpose of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefor by the practice of the religion of any well-recognized religious sect, denomination or organization.

This section shall not apply to a district in which the full-time equivalent of the district is in excess of 400,000, if the district maintains sick leave policies not less than those in effect in such districts on January 1, 1961.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

88192. Industrial Accident and Illness Leaves for Classified Employees. Governing boards of community college districts shall provide, by rules and regulations, for industrial accident or illness leaves of absence for employees who are a part of the classified service. The governing board of any district that is created or whose boundaries or status is changed by an action to organize or reorganize districts completed after January 1, 1975, shall provide, by rules and regulations, for such leaves of absence on or before the date on which the organization or reorganization of the district becomes effective for all purposes.

The rules and regulations shall include all of the following provisions:

(a) Allowable leave shall not be for less than 60 working days in any one fiscal year for the same accident.
(b) Allowable leave shall not be accumulative from year to year.
(c) Industrial accident or illness leave of absence will commence on the first day of absence.
(d) Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation laws of this state, exceed the normal wage for the day.
(e) Industrial accident leave will be reduced by one day for each day of authorized absence regardless of a compensation award made under workers' compensation.
(f) When an industrial accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee shall be entitled to only that amount remaining at the end of the fiscal year, in which the injury or illness occurred, for the same illness or injury.
The industrial accident or illness leave of absence is to be used in lieu of entitlement acquired under Section 88191. When entitlement to industrial accident or illness leave has been exhausted, entitlement to other sick leave will then be used; but if an employee is receiving workers' compensation, the person shall be entitled to use only so much of the person's accumulated or available sick leave, accumulated compensating time, vacation or other available leave which, when added to the workers' compensation award, provide for a full day's wage or salary.

The governing board, by rule or regulation, may provide for additional leave of absence, paid or unpaid, as it deems appropriate and during that leave the employee may return to the person's position without suffering any loss of status or benefits.

Periods of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee.

During all paid leaves of absence, whether industrial accident leave or provided in this section, sick leave, vacation, compensated time off or other available leave provided by law or the action of a governing board, the employee shall endorse to the district wage loss benefit checks received under the workers' compensation laws of this state. The district, in turn, shall issue the employee appropriate warrants for payment of wages or salary and shall deduct normal retirement and other authorized contributions. Reduction of entitlement to leave shall be made only in accordance with this section.

When all available leaves of absence, paid or unpaid, have been exhausted and if the employee is not medically able to assume the duties of the person's position, the person, if not placed in another position, shall be placed on a reemployment list for a period of 39 months. When available, during the 39-month period, the person shall be employed in a vacant position in the class of the person's previous assignment over all other available candidates except for a reemployment list established because of lack of work or lack of funds, in which case the person shall be listed in accordance with appropriate seniority regulations.

The governing board may require that an employee serve, or have served continuously, a specified period of time with the district before the benefits provided by this section are made available to the person. However, that period shall not exceed three years. All service of an employee prior to the effective date of this section shall be credited in determining compliance with the requirement.
Any employee receiving benefits as a result of this section shall, during periods of injury or illness, remain within the State of California unless the governing board authorizes travel outside the state.

In the absence of rules and regulations adopted by the governing board pursuant to this section, an employee shall be entitled to industrial and accident or illness leave as provided in this section but without limitation as to the number of days of that leave and without any requirement of a specified period of service.

An employee who has been placed on a reemployment list, as provided herein, who has been medically released for return to duty and who fails to accept an appropriate assignment shall be dismissed.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

88195. Additional Leave for Nonindustrial Accident or Illness; Reemployment Preference. A permanent employee of the classified service who has exhausted all entitlement to sick leave, vacation, compensatory overtime, or other available paid leave and who is absent because of nonindustrial accident or illness may be granted additional leave, paid or unpaid, not to exceed six months. The board may renew the leave of absence, paid or unpaid, for two additional six-month periods or lesser leave periods that it may provide but not to exceed a total of 18 months.

An employee, upon ability to resume the duties of a position within the class to which he or she was assigned, may do so at any time during the leaves of absence granted under this section and time lost shall not be considered a break in service. The employee shall be restored to a position within the class to which he or she was assigned and, if at all possible, to his or her position with all the rights, benefits and burdens of a permanent employee.

If, at the conclusion of all leaves of absence, paid or unpaid, the employee is still unable to assume the duties of his or her position, the employee shall be placed on a reemployment list for a period of 39 months.
At any time during the prescribed 39 months that the employee is able to assume the duties of his or her position, he the employee shall be reemployed in the first vacancy in the classification of his or her previous assignment. The employee’s reemployment shall take preference over all other applicants except for those laid off for lack of work or funds under Section 88117 in which case the employee shall be ranked according to his or her proper seniority. Upon resumption of the employee’s duties, the break in service will be disregarded and the employee shall be fully restored as a permanent employee.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were part of Article 3 (commencing with Section 88060).

88199. Power of Governing Board to Grant Leave of Absence and Compensation for Accident or Illness. Governing boards of community college districts may grant leaves of absence to persons employed in nonacademic positions, and at their discretion may pay compensation at the rate the board prescribes, during the absence, to any employee whose absence is caused by accident or illness, whether or not the absence arises out of or in the course of the employment of the employee, or because of quarantine which results from his or her contact with other persons having a contagious disease while performing his or her duties.

88202. Transfer of Accumulated Sick Leave and Other Benefits. Any classified employee of a community college district, school district, or county superintendent of schools who has been employed for a period of one calendar year or more whose employment is terminated for reasons other than action initiated by the employer for cause and who subsequently accepts employment with a community college district or county superintendent of schools within one year of termination of his former employment, shall have transferred with him or her to the employing community college district or county superintendent of schools the total amount of earned leave of absence for illness or injury to which he or she is entitled under Section 45191 or 88191. This transfer shall be in the same manner as is provided for academic employees.

In any case where an employee was terminated as a result of action initiated by the employer for cause, such a transfer may be made if agreed to by the governing board of the community college district or the county superintendent of schools newly employing the employee.
All or any part of the previous service, not separated by a break in service greater than one year as of the last day of paid service, may, if agreed to by the employing entity, be construed to have been served in the employing community college district or county superintendent of schools of employment for seniority purposes, except that the previous service may not be counted, for seniority purposes, when position or personnel reduction is ordered, for any reason, by the board.

No governing board of a community college district shall adopt any policy or rule, written or unwritten, that requires all classified employees, or any individual classification, or group of classifications of employees transferring to its district to waive any part or all benefits which they may be entitled to have transferred in accordance with this section.

This section shall apply to community college districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

Government Code Section

20963. (a) A state, school, or school safety member, whose effective date of retirement is within four months of separation from employment with the employer subject to this section that granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by the employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found. For purposes of this subdivision, sick leave shall not include sick leave earned as a National Guard member as described in Section 20380.5.

(b) Until receipt of certification from an employer concerning unused sick leave, the board may pay an estimated allowance pursuant to this section. At the time of receipt of the certification, the allowance shall be adjusted to reflect any necessary changes.
(c) Notwithstanding any other provisions of this part, this section shall not apply to local members other than local miscellaneous members employed before July 1, 1980, by a school district that is a contracting agency or those school safety members employed before July 1, 1980, by a contracting agency that is a school district or community college district, as defined in subdivision (i) of Section 20057.

(d) This section shall not apply to any of the following:

(1) A person who becomes a school member on and after July 1, 1980, and any person who becomes a local member employed, on and after July 1, 1980, by a school district that is a contracting agency whether or not the person was ever a school member or local member prior to that date.

(2) A state employee, with respect to sick leave credits earned as a state member under Section 21353.5, except that the member shall be entitled to receive credit under this section for the sick leave he or she has earned as a state member subject to any other retirement formula, provided the member has a sick leave credit balance remaining at the time of retirement.

(e) For the purposes of this section, sick leave benefits provided to state employees pursuant to the state sick leave system shall be construed to mean compensation paid to employees on approved leaves of absence because of sickness.

Labor Code Section

246.5. (a) Upon the oral or written request of an employee, an employer shall provide paid sick days for the following purposes:

(1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.

(2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

(b) An employer shall not require as a condition of using paid sick days that the employee search for or find a replacement worker to cover the days during which the employee uses paid sick days.
(c) (1) An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:

(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.

(B) The cooperation of an employee with an investigation or prosecution of an alleged violation of this article.

(C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

A. Definitions

Illness is defined as any deviation from a normal, healthy state which makes it disadvantageous to the Los Angeles Community College District and/or detrimental to the employee to be at work. This definition shall include emergency medical, dental, optical, and prosthetic work.

Illness leave is a paid or unpaid leave granted to an employee for the diagnosis, care, and/or treatment of a health condition. Such a leave shall also be granted to an employee who is the victim of domestic violence, sexual assault, or stalking.

B. Accrual of Illness Leave

1. Upon initial employment in regular status, an employee will be credited, as of the date of appointment, with illness days as follows:

   a. Employees assigned to a 12-month position shall receive 12 working days of full-pay illness leave and 88 days of half-pay illness leave.
b. Employees assigned to other than a 12 month position shall receive 10 working days of full-pay illness leave and 90 days of half-pay illness leave.

2. Thereafter, a regular employee will be credited annually, on the first date of the pay period in which July 1 falls, as follows:

   a. Employees assigned to a 12-month position shall receive 12 working days of full-pay illness leave and up to 88 days of half-pay illness leave. The number of half-pay illness leave days to be credited shall be the difference between accumulated working days of full-pay illness leave and 100 days. Accrual of half-pay illness days shall cease when the accumulated working days of full-pay illness reaches 100 days or more and shall resume when the number of accumulated working days of full-pay illness falls below 100 days.

   b. Employees assigned to other than a 12 month position shall receive 10 working days of full-pay illness leave and up to 90 days of half-pay illness leave. The number of half-pay illness leave days to be credited shall be the difference between accumulated working days of full-pay illness leave and 100 days. Accrual of half-pay illness days shall cease when the accumulated working days of full-pay illness reaches 100 days or more and shall resume when the number of accumulated working days of full-pay illness falls below 100 days.

3. There shall be no limit to the accumulation of full-pay illness leave.

4. An individual who was employed with another school district, community college district, or county superintendent of schools within one year of accepting employment as a regular classified employee with the Los Angeles Community College District shall be credited with the number of days of unused illness or injury leave of absence accrued under Education Code Section 88191 while employed with the other agency provided that he/she was employed with the former employer for one calendar year or more and voluntarily resigned in good standing.

   The District's Payroll Unit shall obtain verification of the amount of unused illness or injury leave the employee is entitled to bring to this District.

   a. The employee shall be credited, as of the date of appointment, with the verified full-pay illness balance brought from the other agency, in addition to the number of working days of full-pay illness leave authorized in Paragraph B.1., above.
b. If the total number of working days of full-pay illness leave credited is less than 100 working days, he/she shall also be credited with a number of working days of half-pay illness leave which will bring the total number of working days credited to 100.

C. Use of Illness Leave

Any regular classified employee who is absent from duty on account of illness, injury, or other qualifying condition shall be allowed illness leave pay under the following conditions:

1. In order to receive compensation while absent on illness leave, the employee must notify his/her immediate supervisor of his/her absence within the first two working hours, if possible.

2. A new employee must render services before being entitled to illness leave.

3. An employee serving an initial probationary period shall not be eligible to be paid for more than six days of full-pay illness leave until the first day of the period after completion of 130 days of paid service in regular assignments. Half-pay illness leave shall not be paid during this time.

4. No half-pay illness leave shall be allowed until after all full-pay illness leave is exhausted.

5. Fractions of hours of an illness leave shall be reported in increments of one-quarter hour.

6. When a regular employee whose regular assignment is on other than a 12-month, a is assigned to a substitute or relief assignment outside of his/her regular assignment basis, the employee shall be allowed to take illness leave with pay during such limited-term assignment in accordance with the limitations set forth in the provisions of this rule.

7. Provisions of this rule apply to absence due to temporary disability caused by pregnancy or childbirth. However, such provisions do not apply to the period during which an employee is on maternity leave of absence.

8. An employee whose record of illness appears to follow a pattern of habitual use of leave for trivial indispositions or absences so frequent that the efficiency of the service is impaired may be required to present acceptable proof to the supervisor of the reason for absence.

9. An employee shall not be allowed to undertake any gainful employment while absent because of illness, injury, or other qualifying condition. The employee shall certify on the Absence Certification/Request form that he/she was not gainfully employed during the period covered on the form.
D. Requests for Leave

1. An employee who is absent due to illness, injury, or other qualifying condition shall certify on the prescribed Absence Certification/Request form that the absence was due to illness or injury. Compensation for illness leave shall be paid only when the employee's supervisor certifies that the absence was on account of illness, injury, or other qualifying condition. Nothing shall preclude the employee’s supervisor from taking necessary steps to verify the validity of the illness leave, which may include requesting documentation for the illness leave.

When an employee is absent because of illness, injury, or other qualifying condition for more than five consecutive days, the Absence Certification/Request form must be accompanied by an attending licensed physician or other recognized practitioner’s statement certifying that the absence was due to illness, injury, or other qualifying condition.

If an employee is incapacitated and unable to sign the prescribed form, the Division of Human Resources may approve an illness leave and the employee’s supervisor may approve the prescribed form in lieu of the employee's certification in order that payment of illness leave benefits may be authorized.

2. When an employee is absent because of illness, injury, or other qualifying condition for more than 20 consecutive days, a request for a formal leave of absence must be submitted by the employee and is subject to the approval of the Division of Human Resources. The Leave of Absence Request form must be accompanied by an attending licensed physician or other recognized practitioner’s statement certifying that the absence is due to illness or injury. A Leave of Absence Request Form shall be sent by any employee who has been absent because of illness or injury for ten consecutive days by the employing college or division.

3. A permanent employee who has exhausted all paid illness privileges, vacation, and other available paid leave may be granted additional unpaid illness leave, not to exceed a total of 18 months in three six month or lesser increments, upon approval of the Division of Human Resources and the employee’s division head or college president. Such approval shall be required for each additional six month or lesser extension.

An employee who declines to use available paid vacation and other available paid leave may not be granted additional illness leave under the provision of this paragraph.
An employee shall be required to interrupt an unpaid illness leave granted under the provisions of this paragraph to use all paid leave that may accrue due to the annual renewal of illness balances, including paid vacation time or other paid leave that may become available due to return to paid status. The resulting period in paid status shall not serve to restart or extend the 18 month maximum unpaid illness leave allowed under the provisions of this paragraph.

Eligibility for additional unpaid illness leave under the provisions of this paragraph shall not be granted to an employee who returns to active service for a period of less than six months following a previous period of unpaid illness leave granted under the provisions of this paragraph.

a. Unless notified to the contrary within 30 days, the employee may properly assume the leave has been granted.

b. Denial of the requested leave for medical reasons may be a basis for appeal in accordance with Rule 836, APPEALS OF MEDICAL DISQUALIFICATIONS OF CLASSIFIED EMPLOYEES AND ELIGIBLES.

c. Denial of the requested leave for other than medical reasons may be a basis for the employee to avail himself/herself of Rule 893, PROCEDURE FOR THE ADJUSTMENT OF GRIEVANCES OF CLASSIFIED PERSONNEL.

E. Payment of Illness Leave

1. Salary differentials shall be included in computing illness pay for employees who receive such salary differentials.

2. No half-pay illness leave shall be allowed until after all full-pay illness leave is exhausted.

3. A day of paid illness leave for an employee assigned to a position for less than eight hours or 40 hours a week shall consist of the number of hours in his/her basic daily assignment. Authorization to work additional hours beyond the basic daily assignment shall not increase illness leave benefits. When additional working hours are authorized for longer than one month, the employees basic daily assignment shall be increased.

4. Salary payment shall be withheld from an employee who has been absent because of illness, injury, or other qualifying condition for more than 20 consecutive days if a formal leave of absence has not been approved by the Division of Human Resources.
5. Neither layoff nor leave of absence shall be considered as an interruption of continuous service, but no paid illness leave shall be allowed during layoff or leave of absence except illness leave of absence or leave to accept other employment in the District’s classified service.

6. When an employee has exhausted full-pay paid illness leave, he/she may request using vacation pay in lieu of illness pay. In order to effect this change, the employee shall notify his/her supervisor and payroll office of the dates to be paid as vacation. The beginning date shall not be earlier than the date on which the request is made and the number of days to be paid as vacation shall not exceed the employee's vacation balance. Upon completion of payment for the designated vacation period, the employee may again be paid for illness leave.

F. Return to Service Following Leave

1. An employee shall notify his/her supervisor at least one day in advance of his/her expected return from illness leave in order that any substitute service may be terminated. If a returning employee fails to comply with this provision and in the event that both the regular employee and the substitute report for duty, the latter is entitled to the assignment for the day.

2. Upon return to service from illness leave, an employee shall be placed in a position in his/her former job classification and, if vacant to his/her former position in the class. If no vacancy exists in the former class, he/she shall have the right to exercise bumping rights provided that he/she does not have the least seniority in that class. If an employee's former class has ceased to exist, the employee may be reassigned or shall be placed on the reemployment lists for the classes in which he/she had attained regular status.

3. When all paid or unpaid leaves of absence have been exhausted, and the employee is not medically able to assume the duties of his/her position, the employee shall be placed on a reemployment list for a period of 39 months as if he/she were being laid off. An employee on a reemployment list shall have the same rights and benefits as an employee laid off for lack of work or lack of funds as provided in Rule 740, LAYOFF AND REEMPLOYMENT.

An employee subject to placement on a reemployment list for medical reasons may request a review of other placement options through the Division of Human Resources.

4. An employee returning to duty shall be subject to provisions of Rule 617, HEALTH EVALUATIONS.
G. Termination of Employment

There shall not be a lump-sum payment for any unused accumulated illness leave upon separation from employment. Regular employees who are members of PERS and who retire within four months of separation from the District may be eligible for additional service credit for each unused day of earned illness leave in accordance with PERS policies and regulations.

H. Industrial Accident Leave

Employees in the classified service who are absent because of illness or injury resulting from industrial accidents or industrial illness qualifying under provisions of Workers’ Compensation shall be allowed leave as provided in Rule 804, LEAVES RESULTING FROM INDUSTRIAL ACCIDENT OR INDUSTRIAL ILLNESS.

I. Change of Service

An employee of the Los Angeles Community College District who changes assignment from the academic service to a regular position in the classified service shall have transferred any unused paid illness or injury leave benefits previously accrued. Such an employee is not subject to the use restrictions on paid illness leave that apply to employees serving in an initial probationary period. Such employee shall not accrue additional illness leave benefits solely from the change of service.