

# Gravenstein Union School District

## Administrative Regulation

CERTIFICATED, CLASSIFIED, ADMINISTRATIVE

### Personal Leaves

AR 4161.2 4261.2, 4361.2

#### Personnel

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

\*\*\*Note: As provided in the following paragraph, Family Code 297.5 extends to registered domestic partners the same rights that are available under state law to spouses. Thus, pursuant to Family Code 297.5, any reference to an employee's spouse throughout the following regulation also applies to a registered domestic partner, even if not expressly stated in the applicable state codes (e.g., Education Code, Military and Veterans Code). Districts should consult legal counsel if a question arises as to leave provisions relative to an employee's domestic partner. \*\*\*

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

\*\*\*Note: Education Code 44985 and 45194 allow the Governing 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. \*\*\*

Classified 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. Certificated employees bereavement leave shall be as specified per the collective bargaining agreement (CBA). 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)

Members of the immediate family include: (Education Code 44985, 45194)

1. The mother, father, grandmother, grandfather, or grandchild of the employee or of the

employee's spouse

2. The employee's spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister
3. Any relative living in the employee's immediate household

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**

\*\*\*Note: Employees may use a maximum of seven days of accumulated personal illness/injury leave (sick leave) for reasons of personal necessity pursuant to Education Code 44981 (certificated employees) and 45207 (classified employees). Pursuant to Education Code 44981 and 45207, a higher maximum may be set for certificated and classified employees in their collective bargaining agreement or by Board resolution for classified employees who are not covered by a collective bargaining agreement. Districts that have established a maximum that is higher than seven days should modify the following paragraph accordingly. \*\*\*

\*\*\*Note: Education Code 45207 clarifies that provisions pertaining to personal necessity leave also apply to districts that have adopted the merit system for classified employees in accordance with Education Code 45240-45320. \*\*\*

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

\*\*\*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 the employees to use one-half of their annual sick leave allotment to attend to the illness of a child, parent, spouse, registered domestic partner, or registered 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/registered domestic partner; 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)

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent or designee. However, personal necessity leave shall not 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 or not a request reflects personal necessity.

\*\*\*Note: Education Code 44981 and 45207 specify circumstances under which certificated and classified employees cannot be required to seek advance permission for the leave. However, only certificated employees are afforded the right, pursuant to Education Code 44981, to not be required to provide advance notice for leave due to a serious illness of the employee's family member. Districts may, at their discretion, extend this right to all employees as stated in the following optional paragraph. Districts that wish to restrict the provision to certificated employees should revise the paragraph accordingly. \*\*\*

\*\*\*Note: Also see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave for requirements pertaining to requests for leaves that qualify under the federal Family and Medical Leave Act (29 USC 2601-2654) or the California Family Rights Act (Government Code 12945.1-12945.2), including provisions that allow employees to provide notice as soon as practicable when 30-day advance notice is not practicable due to lack of knowledge of the date the leave will be needed, a change in circumstances, or a medical emergency. \*\*\*

Advance permission shall not be required of any employee in any case 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 the employee's 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.

\*\*\*Note: Education Code 44981 and 45207 mandate the adoption of regulations requiring, and prescribing the manner of, proof of personal necessity. The following paragraph may be revised to specify

the manner of proof required by the district. \*\*\*

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

\*\*\*Note: Pursuant to Education Code 44037, it is unlawful for the district or personnel commission to (1) adopt any rule, regulation, or policy that encourages employees to seek exemption from jury duty; (2) directly or indirectly solicit or suggest to any employee that he/she seek exemption from jury duty; or (3) discriminate against any employee with respect to assignment, employment, promotion, or in any other manner because of his/her service on a jury panel. However, the Board or personnel commission may establish a rule providing that only a percentage of district staff, which shall not be less than two percent, shall be granted such leave with pay at any one time. The following section may be revised to reflect district practice. \*\*\*

\*\*\*Note: Labor Code 230 prohibits the discharge of or discrimination or retaliation against an employee for taking time off for the activities specified in items #1-2 below. \*\*\*

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)

\*\*\*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 by Education Code 44036. Districts that do not grant such leave should delete this paragraph. \*\*\*

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.

\*\*\*Note: Education Code 44036 allows the Board, at its discretion, to provide paid leaves for employees to appear as witnesses in court other than as litigants or to respond to orders from another governmental jurisdiction. The following paragraph is optional. Districts that do not grant such leave should delete this paragraph. \*\*\*

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**

\*\*\*Note: Labor Code 230.2 prohibits a district from taking adverse employment action against an employee who takes 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, 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

\*\*\*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 an employee. \*\*\*

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, Sexual Assault and Stalking**

\*\*\*Note: Pursuant to Labor Code 230 and 230.1, as amended by SB 400 (Ch. 759, Statutes of 2013), the prohibition of adverse employment action against employees who are victims of domestic violence and sexual assault for taking leaves described in the following section is also applicable to victims of stalking. As amended, Labor Code 230 and 230.1 allow employees to use their available vacation, personal leave, or compensatory time off for this purpose, unless otherwise provided by applicable collective bargaining agreement. However, a collective bargaining agreement cannot diminish the entitlement of an employee. \*\*\*

\*\*\*Note: Labor Code 246.5 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), requires the district to allow the use of sick leave by any employee who is a victim of domestic violence, sexual assault, or stalking for the purpose of seeking or obtaining any relief or medical attention to ensure the employee's or his/her child's health, safety, and welfare, as specified below. \*\*\*

An employee who is a victim of domestic violence, sexual assault, or stalking as defined by law may use vacation, sick leave, 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, 246.5)

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

\*\*\*Note: Labor Code 230.1, as amended by SB 400 (Ch. 759, Statutes of 2013), requires a district with 25 or more employees to grant time off to an employee who is a victim of sexual assault, domestic violence, or stalking for the following additional reasons. A district with fewer than 25 employees may use or delete items #2-5 below at its discretion. \*\*\*

2. Seek medical attention for injuries caused by domestic violence, sexual assault, or stalking
3. Obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking
4. Obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking
5. Participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, 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: (Labor Code 230, 230.1)

1. A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking
2. A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court

\*\*\*Note: Pursuant to Labor Code 230, as amended by SB 400 (Ch. 759, Statutes of 2013), the list of professionals authorized to issue documentation to certify an employee's need for leaves within this

section has been modified as specified in item #3 below. \*\*\*

3. Documentation from a domestic violence or sexual assault counselor as defined in Evidence Code 1037.1 or 1035.2, licensed medical professional or health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking

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**

\*\*\*Note: Pursuant to Labor Code 230.8, the following section applies to any district employing 25 or more employees at the same location. A district with fewer than 25 employees at the same location may use or delete this section at its discretion. \*\*\*

\*\*\*Note: Pursuant to Labor Code 230.8, an employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated against for using the 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. \*\*\*

Any employee who is a parent/guardian or grandparent having custody of one or more children 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. The employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

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

In lieu of using vacation, personal leave, or compensatory time off, eligible employees may take 40 hours per year, without pay, up to 8 hours per month for this purpose.

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**

\*\*\*Note: The following optional section may be deleted by any district whose collective bargaining agreements expressly provide for a paid leave of absence for participation in the activities described in this section. \*\*\*

\*\*\*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 within 10 days after receiving the district's certification of payment of compensation to the employee. This leave of absence is in addition to the release time granted to representatives of an employee organization pursuant to Government Code 3543.1. \*\*\*

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)

\*\*\*Note: Education Code 45210 requires districts to grant a paid leave of absence to a reasonable number of classified employees serving as unelected members of the employee organization or a statewide or national public employee organization when the employee attends "important organizational activities authorized by the public employee organization." Compensation must include the required retirement fund contributions. The employee will continue to earn full service credit during the leave and must pay member contributions as specified. The maximum amount of service credit an employee may earn cannot exceed 12 years. Education Code 45210 also requires that an employee organization provide reasonable notification to the district when requesting a leave of absence without loss of compensation for an employee. \*\*\*

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)

### **Spouse on Leave from Military Deployment**

\*\*\*Note: Military and Veterans Code 395.10 requires any district with 25 or more employees to allow up to 10 days of unpaid leave to an employee whose spouse is on leave from military deployment. A district with fewer than 25 employees may use the following section at its discretion. In addition, 29 USC 2612 authorizes an employee to take up to 26 work weeks of unpaid military caregiver leave or up to 12 weeks of "exigency" leave during a single 12-month period, as determined by the district; see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. \*\*\*

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)

### **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: Pursuant to Labor Code 230.4, as amended by AB 11 (Ch. 120, Statutes of 2013), the requirement for a district with 50 or more employees to grant an employee who is a volunteer firefighter leaves of absence for up to 14 days per calendar year for training purposes has been extended to employees who are reserve peace officers and emergency rescue personnel as specified in the following paragraph. A district with fewer than 50 employees may use or delete this paragraph at its discretion. \*\*\*

Any employee who performs duty as a volunteer firefighter, reserve peace officer, or emergency

rescue personnel 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, law enforcement, or emergency rescue training. (Labor Code 230.4)

### **Civil Air Patrol Leave**

\*\*\*Note: Labor Code 1500-1507 require a district with more than 15 employees to provide at least 10 days of unpaid leave per year, beyond any leave otherwise available to employees, to employees who volunteer with the Civil Air Patrol and are directed to respond to an emergency operational mission, as provided below. Labor Code 1503 specifies that a district may not require an employee to first exhaust all accrued vacation, personal, sick, or any other available leave in order to use Civil Air Patrol leave. \*\*\*

\*\*\*Note: If the district chooses to offer more than 10 days of such leave per year or to provide paid leave, it should modify the following paragraph accordingly. A district with 15 or fewer employees may use or delete this section at its discretion. \*\*\*

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:

##### 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

##### EVIDENCE CODE

- 1035.2 Sex assault counselor; definition
- 1037.1 Domestic violence counselor; definition

##### 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

246.5 Paid sick days, purposes for use

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:

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>

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**Gravenstein Union School District  
Sebastopol, California**