

# Gravenstein Union School District

## Administrative Regulation

### Personal Illness/Injury Leave

AR 4161.1 4361.1

#### Personnel

\*\*\*Note: The following optional administrative regulation is subject to collective bargaining. Education Code 44978 provides a minimum of 10 days of personal illness or injury leave (sick leave) per year for certificated employees working five days a week. The Governing Board may allow additional days at its discretion; if it does so, the following paragraph should be revised accordingly. \*\*\*

\*\*\*Note: Effective July 1, 2015, Labor Code 245-249 (the Healthy Workplaces, Healthy Families Act), as added by AB 1522 (Ch. 317, Statutes of 2014), require districts to grant a minimum of one hour of paid sick leave for every 30 hours worked to their employees who work for 30 days within a year of their employment, including temporary and substitute employees. Additional requirements of Labor Code 245-249 include, but are not limited to, display of a poster containing specified information at every workplace, provision of each employee's sick leave balance on his/her wage statements, and maintenance of leave usage documentation for three years. The provisions of Labor Code 245-249 are very broad and only district employees covered by a valid collective bargaining agreement may be exempted from them, if the collective bargaining agreement expressly provides paid sick leave in an amount equal to or exceeding the amount of leave required pursuant to Labor Code 246, includes final and binding arbitration of disputes regarding the application of the paid sick days provisions, and provides premium wage rates for all overtime hours worked and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate. Since many districts may not satisfy all the conditions for this exemption, this administrative regulation has been drafted to include the requirements of Labor Code 245-249. Any district whose collective bargaining agreement meets all the conditions for exemption may modify this administrative regulation accordingly. \*\*\*

\*\*\*Note: For additional requirements of Labor Code 245-249, see section titled "Healthy Workplaces, Healthy Families Act Requirements" below. For paid sick leave for temporary and substitute certificated employees, see BP/AR 4121 - Temporary/Substitute Personnel. For sick leave for classified employees, see AR 4261.1 - Personal Illness/Injury Leave. \*\*\*

Certificated employees working five school days per week are entitled to 10 days leave of absence for personal illness or injury (sick leave) per school year, with full pay. Employees working 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 employee who is entitled to less than three days of paid sick leave due to the amount of time worked shall be granted sick leave pursuant to Labor Code 246. (Education Code 44978)

(cf. 4161/4261/4361 - Leaves)

(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)

Certificated employees may use sick leave for absences due to:

1. Temporary inability to perform assigned duties because of illness, accident, or quarantine, whether or not the cause of the absence arises out of and in the course of employment (Education Code 44964)  
  
(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)
2. Pregnancy, miscarriage, childbirth, and related recovery (Education Code 44965, 44978)  
  
(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)
3. Personal necessity (Education Code 44981)  
  
(cf. 4161.2/4261.2/4361.2 - Personal Leaves)
4. Industrial accidents or illnesses when leave granted specifically for that purpose has been exhausted (Education Code 44984)

(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)

\*\*\*Note: Pursuant to Labor Code 233, any employer who provides sick leave for employees must permit them to use sick leave in any calendar year to attend to the illness of their child, parent, spouse, domestic partner, or domestic partner's child, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement (e.g., five days accrued during six months for full-time certificated employees, unless the district has established an amount that is higher than the legal minimum). Certificated employees also may use sick leave for personal necessity, including the serious illness of a member of the employee's immediate family pursuant to Education Code 44981; see AR 4161.2/4261.2/4361.2 - Personal Leaves. Districts are cautioned to consult legal counsel regarding possible interaction of sick leave and personal necessity leave provisions in the Education Code and Labor Code. \*\*\*

6. Illness of the employee's child, parent, spouse, domestic partner, or domestic partner's child for up to the amount of sick leave that would be accrued by the employee during six months at his/her then current rate of entitlement (Labor Code 233)

\*\*\*Note: Pursuant to Labor Code 246.5, as added by AB 1522 (Ch. 317, Statutes of 2014), paid sick leave may also be used for the purposes specified in items #7 and #8 below. Labor Code 245.5, as added by AB 1522, defines "family member" for the purpose of item #7 to include a registered domestic partner, grandparent, and sibling. Item #8 applies only to employees who are victims of domestic violence, sexual assault, or stalking. For additional information about leaves for victims of domestic violence, sexual assault, or stalking, see AR 4161.2/4261.2/4361.2 - Personal Leaves. \*\*\*

7. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or his/her family member as defined in Labor Code 245.5 (Labor Code 246.5)

8. Need of the employee to obtain or seek 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 his/her child, when the employee has been a victim of domestic violence, sexual assault, or stalking (Labor Code 246.5)

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)

\*\*\*Note: The following paragraph is optional. \*\*\*

An employee shall reimburse the district for any unearned sick leave used as of the date of his/her termination.

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

\*\*\*Note: The following optional paragraph may be revised to reflect district practice. \*\*\*

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

\*\*\*Note: Pursuant to Education Code 44979-44980, a certificated employee is entitled to have his/her accumulated sick leave transferred with him/her in the circumstances specified in the following optional paragraph. \*\*\*

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, he/she may request that the district transfer his/her accumulated sick leave to the new employer. (Education Code 44979, 44980)

### **Notification of Absence**

\*\*\*Note: The following optional section may be revised to reflect district practice. \*\*\*

An employee shall notify the district of his/her 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 he/she intends to return to work.

(cf. 4121 - Temporary/Substitute Personnel)

### **Continued Absence After Available Sick Leave Is Exhausted/Differential Pay**

\*\*\*Note: Pursuant to Education Code 44977, an employee who is absent for up to five months after exhausting all his/her available sick leave must receive his/her regular salary minus the cost of a substitute. Option 1 below reflects this requirement. \*\*\*

\*\*\*Note: However, Education Code 44983 provides that Education Code 44977 does not apply to those districts that adopt a rule that gives certificated employees 50 percent or more of their regular salary during the period of absence. Option 2 below is for use by districts that choose to specify such a level of compensation; these districts are mandated to adopt a rule to this effect. \*\*\*

#### OPTION 1:

During each school year, when a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and, due to illness or injury, continues to be absent from his/her duties for an additional period up to five school months, the employee shall receive his/her regular salary minus the actual cost of a substitute to fill the position. If the district has made every reasonable effort to secure the services of a substitute and has been unable to do so, the amount that would have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

\*\*\*Note: In *Veguez v. Long Beach Unified School District*, the court held that an employee is not entitled to more than a total of five months of differential pay "per illness or accident," even if the employee works for a period of time between sick leave increments related to the same medical condition. \*\*\*

An employee shall not be provided more than one five-month period per illness or injury. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)

\*\*\*Note: Option 2 below is mandated for use by districts that choose to provide employees at least 50 percent of their regular salary during the period of absence pursuant to Education Code 44983. The following paragraph specifies a percentage of 50 percent and should be modified by districts that have set a higher percentage. \*\*\*

\*\*\*Note: The following paragraph is for use by districts that selected either Option 1 or Option 2. \*\*\*

If a certificated employee is not medically able to resume his/her duties 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, he/she shall be returned to employment in a position for which he/she is credentialed and qualified. (Education Code 44978.1)

(cf. 4116 - Probationary/Permanent Status)

\*\*\*Note: When an employee is absent for a period of more than five months, or is absent for a cause other than illness, Education Code 44977 and 44983 provide that the amount deducted from his/her salary shall be determined according to the rules and regulations adopted by the Board as long as such rules are not in conflict with State Board of Education regulations. If not covered in the district's negotiated agreement, the district may add provisions here reflecting salary deductions for employees absent longer than five months. \*\*\*

## **Verification Requirements**

\*\*\*Note: Education Code 44978 mandates the Board to adopt regulations requiring proof of illness or injury and prescribing the means of verification. However, Education Code 44978 provides that these regulations shall not discriminate against evidence of treatment and the need for treatment by the practice of a well-recognized religion. For verification requirements for employees on leave pursuant to the Family and Medical Leave Act, see AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. \*\*\*

\*\*\*Note: The following section should be modified to reflect district practice and any procedures which have been specified in negotiated agreements. \*\*\*

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

The Superintendent or designee may, at any time, require additional written verification by the employee's physician or other authorized health care provider. Such verification shall be required 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 medical condition of the employee. The report shall include a statement as to 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.

\*\*\*Note: 42 USC 2000ff-1, the Genetic Information Nondiscrimination Act, and its implementing regulations, 29 CFR 1635.1-1635.12, specify that it is unlawful for a district to request, require, or purchase an employee's or his/her family member's individual genetic information except in complying with the medical certification requirements for family care and medical leave purposes or with the employee's prior written authorization. See AR 4161.8/4261.8/4361.8 - Family Care and Medical Leave. Pursuant to 29 CFR 1635.9, any such information received by the district must be kept confidential as specified below. \*\*\*

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 shall 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 his/her physician stating that he/she is able to return to duty and stipulating any necessary restrictions or limitations.

(cf. 4032 - Reasonable Accommodation)

(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)

### **Healthy Workplaces, Healthy Families Act Requirements**

\*\*\*Note: Pursuant to Labor Code 245-249, as added by AB 1522 (Ch. 317, Statutes of 2014), all employers, including those that provide paid time off to their employees under existing policy or other law, must comply with the requirements specified in the following section. Pursuant to Labor Code 248.5, noncompliance with the Healthy Workplaces, Healthy Families Act could result in enforcement action against the employer, including the imposition of civil and monetary penalties. Any district with questions regarding the applicability of this new law should consult its legal counsel. \*\*\*

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:
  - a. That an employee is entitled to accrue, request, and use paid sick days
  - b. The amount of sick days provided by Labor Code 245-249
  - c. The terms of use of paid sick days
  - d. That discrimination or retaliation against an employee for requesting or using sick leave is prohibited by law and an employee has the right to file a complaint with the Labor Commissioner if the district discriminates or retaliates against him/her
2. Provide at least 24 hours or three 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

(cf. 4112.9/4212.9/4312.9 - Employee Notifications)

4. Keep a record documenting the hours worked and paid sick days accrued and used by each eligible employee for three years

Legal Reference:

EDUCATION CODE

- 44964 Power to grant leave of absence in case of illness, accident, or quarantine
- 44965 Granting of leaves of absence for pregnancy and childbirth
- 44976 Transfer of leave rights when school is transferred to another district
- 44977 Salary deduction during absence from duties up to five months after sick leave is exhausted
- 44978 Provisions for sick leave of certificated employees
- 44978.1 Inability to return to duty; placement in another position or on reemployment list
- 44979 Transfer of accumulated sick leave to another district
- 44980 Transfer of accumulated sick leave to a county office of education
- 44981 Leave of absence for personal necessity
- 44983 Exception to sick leave when district adopts specific rule
- 44984 Industrial accident or illness
- 44986 Leave of absence for disability allowance applicant

LABOR CODE

- 220 Sections inapplicable to public employees
- 230 Jury duty; legal actions by domestic violence, sexual assault and stalking victims, right to time off
- 230.1 Employers with 25 or more employees; domestic violence, sexual assault and stalking victims, right to time off
- 233 Illness of child, parent, spouse or domestic partner
- 234 Absence control policy
- 245-249 Healthy Workplaces, Healthy Families Act of 2014

CODE OF REGULATIONS, TITLE 5

- 5601 Transfer of accumulated sick leave

UNITED STATES CODE, TITLE 42

- 2000ff-2000ff-11 Genetic Information Nondiscrimination Act of 2008

CODE OF FEDERAL REGULATIONS, TITLE 29

- 1635.1-1635.12 Genetic Information Nondiscrimination Act of 2008

COURT DECISIONS

- Veguez v. Governing Board of Long Beach Unified School District, (2005) 127 Cal.App.4th 406

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**Gravenstein Union School District  
Sebastopol, California**