

# WHAT YOU SHOULD KNOW ABOUT LEAVES & REASONABLE ACCOMMODATIONS DURING THE COVID-19 PANDEMIC

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As the COVID-19 pandemic continues, many CTA members have questions about their workplace rights regarding medical leave, family leave, reasonable accommodations for disabilities, underlying health conditions, and similar matters. This document summarizes various sources of leave-related legal rights that might be available to California school employees who have concerns about their ability to work due to COVID-19.

Any CTA member needing assistance with these issues should contact their local chapter representative and/or their CTA Primary Contact Staff.



## PUBLIC SCHOOL EMPLOYEE LEAVES FOR COVID-19

### Exclusion Pay & Cal/OSHA's Emergency Temporary Standards (ETS)

- California's Division of Occupational Safety and Health (Cal/OSHA) passed Emergency Temporary Standards (ETS) related to COVID-19 that require employers to continue to provide full pay, benefits, and other employment rights (including job status) for employees who are excluded from the worksite due to a work-related COVID-19 exposure or positive COVID-19 test. Typically, the ETS require employers to exclude and continue to pay employees during the period of quarantine, which could be up to fourteen days.
  - Under the ETS, an employer is not required to exclude a fully-vaccinated employee who has a close contact with an infected individual unless the employee has a positive COVID-19 test or the employee develops COVID-19 symptoms.
- Employers are not required to provide these benefits if the employer can demonstrate that the employee's close contact with an infected individual was not work-related.
- Employees are not entitled to exclusion pay if they receive pay because they are reassigned to work from home or receive workers' compensation during the exclusion period.
- An employer may require employees to use employer-provided employee sick leave before providing exclusion pay.
- The ETS went into effect on November 30, 2020, were readopted on June 17, 2021, and are currently scheduled to expire on January 14, 2022.
- See [Cal/OSHA's COVID-19 Emergency Temporary Standards FAQs on Exclusion Pay](#).

## FMLA & California Family Rights Act (CFRA)

- ◉ FMLA (federal statute) and CFRA (state statute) provide up to 12 weeks of unpaid leave in a 12-month period for:
  - Employee's own serious health condition;
  - Family member's serious health condition; or
  - Child bonding within first year of birth; adoption, or foster care.
- ◉ To qualify, an employee must have worked at least 12 months and 1,250 hours in the preceding 12 months.
- ◉ COVID-19 should qualify as a "serious health condition" if it results in hospitalization, continuing treatment or supervision by a medical provider, or another serious condition such as pneumonia.
- ◉ Because CFRA does not cover pregnancy as a serious health condition, and California Pregnancy Disability Leave (PDL) separately provides leave for an employee disabled by pregnancy, an eligible employee can take pregnancy-disability leave in addition to a 12-week child bonding leave.
  - Note: The CDC identifies pregnancy as a condition that might cause increased risk for severe illness from COVID-19. See [CDC website](#).
- ◉ See [Department of Fair Employment and Housing website](#).

## California Education Code (EC)

### *CERTIFICATED EMPLOYEES*

#### **EC 44984 – Industrial Accident & Illness Leave**

- ◉ An employee whose workers' compensation claim is approved is entitled to at least 60 days of full salary (when combined with temporary disability payments received for an approved workers' compensation claim).
- ◉ After this leave is exhausted, the employee is entitled to sick leave and differential pay leave.

#### **EC 44978 – Sick Leave**

- ◉ 10 days per year for full-time employees for illness or injury; pro-rated if part-time.
- ◉ Accumulates from year to year.
- ◉ Credit for sick leave need not be accrued by the employee prior to taking sick leave so it may be taken at any time during the school year.

#### **EC 44981 – Personal Necessity Leave**

- ◉ In any school year, 7 of the 10 sick days allowed under EC 44978 may be used by an employee, at their election, for personal necessity, which includes the serious illness or death of the employee's immediate family member, an accident involving the employee's person or property, or an accident involving the person or property of an immediate family member.

#### **EC 44977 – Differential Pay Leave**

- ◉ Provides up to 5 school months of differential pay due to illness or accident after exhausting all annual and accumulated sick leave.
- ◉ Differential pay is regular salary MINUS the amount actually paid to a substitute OR, if no substitute is employed, the amount a substitute would have been paid.
  - But if district adopts 50 percent rule under EC 44983, employee must be paid at least 50 percent of regular pay after exhausting sick leave.
- ◉ Only one 5-month period allowed per illness/accident.

## EC 44978.1 – Reemployment List

- When sick leave and differential pay are exhausted, and the employee is not medically able to resume work, the employee is placed on a reemployment list:
  - 24 months, if probationary;
  - 39 months, if permanent.
- When medically able, during the 24- or 39-month period, the employee *shall* be returned to employment in a position for which they are credentialed and qualified.

## *COMMUNITY COLLEGE ACADEMIC EMPLOYEES*

### EC 87787 – Industrial Accident & Illness Leave

- An employee whose workers' compensation claim is approved is entitled to at least 60 days of full salary (when combined with temporary disability payments).
- After this leave is exhausted, the employee is entitled to sick leave and differential pay leave.

### EC 87781 – Sick Leave

- 10 days per year for full-time employees for illness or injury; pro-rated if part-time.
- Accumulates from year to year.
- Credit for sick leave need not be accrued by the employee prior to taking sick leave so it may be taken at any time during the school year.

### EC 87784 – Personal Necessity Leave

- In any school year, 6 of the 10 sick days allowed under EC 87781 may be used by an employee, at their election, for personal necessity, which includes the serious illness or death of the employee's immediate family member, an accident involving the employee's person or property, or an accident involving the person or property of an immediate family member.

### EC 87780 – Differential Pay Leave

- Provides up to 5 school months of differential pay due to illness or accident after exhausting all annual and accumulated sick leave.
- Differential pay is regular salary MINUS the amount actually paid to a temporary employee who fills the position during the leave OR, if no temporary employee is employed, the amount a temporary employee would have been paid.
  - But if the district adopts 50 percent rule under EC 87786, employee must be paid 50 percent or more of regular pay after exhausting all sick leave.

## *PREK-12 CLASSIFIED EMPLOYEES*

### EC 45192 – Industrial Accident & Illness Leave

- An employee whose workers' compensation claim is approved is entitled to at least 60 days of full salary (when combined with temporary disability payments).
- After this leave is exhausted, the employee is entitled to sick leave, differential pay leave, accumulated compensating time, vacation, or other available leave.
- District may require minimum length of employment to qualify for benefits, not to exceed three years.

### EC 45191 – Sick Leave

- 12 days per year for 12-month employees employed five days a week for illness or injury; pro-rated if employed less than 12 months or five days a week.
- Accumulates from year to year.

- Credit for sick leave need not be accrued by the employee prior to use. But new employees may not use more than six days (or proportionate amount, if part-time) until they complete six months of service.

#### **EC 45207 – Personal Necessity Leave**

- In any school year, 7 of the 10 sick days allowed under EC 45191 may be used by an employee, at their election, for personal necessity, which includes the death of the employee's immediate family member, an accident involving the employee's person or property, or an accident involving the person or property of an immediate family member.

#### **EC 45196 – Differential Pay Leave**

- Provides up to 5 months of differential pay due to illness or accident after exhausting all other available paid leave.
- Differential pay is regular salary MINUS the amount actually paid to a substitute.
  - Unlike EC 44977, the employer may not deduct the amount that a substitute “would have been paid.” Thus, if the district does not actually employ a substitute to perform the absent employee's work, the employee should receive 100 percent of salary.
- Alternatively, the district may adopt a rule providing that a regular classified employee will receive at least 100 working days of paid sick leave each year paid at not less than 50 percent of the employee's regular salary. This rule results in combined sick leave and differential leave of at least 100 days each year.
- Unlike EC 44977, this section has no limitation of one 5-month period per illness/accident.

#### **EC 45195 – Reemployment List**

- When all sick leave, differential pay leave, vacation, compensating time, or other paid leave are exhausted, a permanent classified employee may apply for additional leave, paid or unpaid, for up to six months, which leave may be renewed for two additional six-month periods. The district is not required to grant the additional six-month leaves. If no additional leave is granted, or the leaves are exhausted, the employee will be placed on a reemployment list for 39 months.
  - If, during the discretionary leaves, the employee is able to resume their duties, the employee shall be restored to a position within the same classification.
  - When medically able, during the 39-month period, the employee *shall* be reemployed in the first vacancy for the employee's previous classification. The employee has priority over other applicants, except for laid off employees, in which case, the employee shall be ranked based on seniority.

### ***COMMUNITY COLLEGE CLASSIFIED EMPLOYEES***

#### **EC 88192 – Industrial Accident & Illness Leave**

- An employee whose workers' compensation claim is approved is entitled to at least 60 days of full salary (when combined with temporary disability payments).
- After this leave is exhausted, the employee is entitled to sick leave, differential pay leave, accumulated compensating time, vacation, or other available leave.
- District may require minimum length of employment to qualify for benefits, not to exceed three years.

#### **EC 88191 – Sick Leave**

- 12 days per year for 12-month employees employed five days a week for illness or injury; pro-rated if employed less than 12 months or five days a week.
- Accumulates from year to year.

- Credit for sick leave need not be accrued by the employee prior to use. But new employees may not use more than six days (or proportionate amount, if part-time) until they complete six months of service.

#### **EC 88207 – Personal Necessity Leave**

- In any school year, 7 of the 10 sick days allowed under EC 88191 may be used by an employee, at their election, for personal necessity, which includes the death of the employee's immediate family member, an accident involving the employee's person or property, or an accident involving the person or property of an immediate family member.

#### **EC 88196 – Differential Pay Leave**

- Provides up to 5 months of differential pay due to illness or accident after exhausting all other available paid leave.
- Differential pay is regular salary MINUS the amount actually paid to a substitute.
  - Unlike EC 44977, the employer may not deduct the amount that a substitute would have been paid. Thus, if the district does not actually employ a substitute to perform the absent employee's work, the employee should receive 100 percent of salary.
- Alternatively, the college may adopt a rule providing that a regular classified employee will receive at least 100 working days of paid sick leave each year paid at not less than 50 percent of the employee's regular salary. This rule results in combined sick leave and differential leave of at least 100 days each year.
- Unlike EC 44977, this section has no limitation of one 5-month period per illness/accident.

#### **EC 88195 – Reemployment List**

- When all sick leave, differential pay leave, vacation, compensating time, or other paid leave are exhausted, a permanent classified employee may apply for additional leave, paid or unpaid, for up to six months, which leave may be renewed for two additional six-month periods. The college district is not required to grant the additional six-month leaves. If no additional leave is granted, or the leaves are exhausted, the employee will be placed on a reemployment list for 39 months.
  - If, during the discretionary leaves, the employee is able to resume their duties, the employee shall be restored to a position within the same classification.
  - When medically able, during the 39-month period, the employee shall be reemployed in the first vacancy for the employee's previous classification. The employee has priority over other applicants, except for laid off employees, in which case, the employee shall be ranked based on seniority.

## **Collective Bargaining Agreement**

Don't forget to check the applicable collective bargaining agreement, which may provide greater or additional leave rights (e.g., catastrophic leave bank, additional personal necessity leave, etc.). Also, CTA chapters are bargaining with districts over many COVID-19 matters and safety measures. Employees should review those bargained provisions and address any questions to their local chapter.

## **Other Leaves**

- The governing board of a public school employer *may* grant a leave of absence to any employee who is absent because of accident, illness, or quarantine which results from contact with other persons having a contagious disease while performing work. See EC 44964, EC 87765, EC 45199, EC 88199.

- Under California Labor Code sections 233 and 246.5 (“kin care” law), an employee may use accrued and available sick leave—up to the amount that would accrue during a six-month period—to attend to the diagnosis, care, or treatment of a covered family member (as defined in Labor Code section 245.5). See [Labor Commissioner’s website](#).
- CTA members who are enrolled in CTA-endorsed Voluntary Disability Insurance through The Standard may be entitled to benefits as a result of the member’s own disabling condition. The Standard will determine whether the member’s receipt of paid sick leave impacts their approved claim based on the specific claim facts and the applicable policy provisions. For more information, contact The Standard at 800-522-0406 or visit [CTAMemberBenefits.org/disability](#).
- CalSTRS Disability may be available to eligible unit members. See [CalSTRS website](#).



## REASONABLE ACCOMMODATIONS FOR DISABLED PERSONS UNDER THE ADA

The federal Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; 29 C.F.R. §§ 1630 *et seq.* (ADA) and California Fair Employment and Housing Act, Cal. Gov’t Code §§ 12900-12996 (FEHA)

### What employers are covered?

- ADA prohibits disability discrimination by employers with 15 or more employees.
- FEHA prohibits disability discrimination by employers with 5 or more employees.
- Several ADA and FEHA rights overlap. FEHA has some stronger state law-based protections.

### What disabilities are covered?

- A qualifying “disability” can be a mental disability and/or a physical disability that limits one or more major life activities. This can include impairments of major life activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. This can also include impairments of major bodily functions such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- Individuals with a qualified disability that would make it medically contraindicated to receive a COVID-19 vaccine may be entitled, as a reasonable accommodation, to a medical exemption from a vaccine requirement, as long as the accommodation does not impose an undue hardship to the employer.

## How do unit employees request a reasonable accommodation?

- ADA/FEHA requires that employers (including school districts, county offices of education, community colleges, and charter schools) provide “reasonable accommodations” to persons with qualifying disabilities, and the law prohibits retaliation against employees for asserting their rights under ADA/FEHA.
- An employer is required only to provide reasonable accommodation to employees and applicants with a known disability. If the employer is not aware of an employee’s disability, the employee should inform the employer that they have a disability-related limitation and, due to that limitation, they may need a reasonable accommodation to perform their job.
- A reasonable accommodation request can include a request to telework/perform distance learning. Temporary use of sick leave or other paid or unpaid leave might also be a reasonable accommodation.
- The employer must engage timely and in good faith in an “interactive process” with the employee to determine if there is a reasonable accommodation that will allow the employee to perform the essential functions of their job.
- Under California labor law, an exclusive representative has a right to represent a unit employee in the interactive process.
- The interactive process requires an individualized assessment of the job and the physical or mental limitations of the individual that are directly related to the need for a reasonable accommodation. The interactive process is a collaborative on-going discussion to arrive at a reasonable accommodation that enables the employee to perform the essential assigned duties of their position. There are no formal procedures to an interactive process meeting. Sometimes the interactive process involves multiple meetings and conversations.
- An employer, however, is not required to provide a reasonable accommodation that imposes an “undue hardship.” An accommodation is considered an undue hardship when it requires significant difficulty or expense to adopt and implement.
- An employer can reject an accommodation that eliminates an essential function of the job.

## Do I need medical documentation to request a reasonable accommodation? If so, what should it include?

- An employer may request reasonable medical documentation that confirms the existence of a disability and the need for a reasonable accommodation.
- An employer may not request a specific medical diagnosis under FEHA. Medical documentation, however, should explain any disability-related limitations and possible accommodations that might enable the patient/employee to perform the essential functions of the job.
- The Department of Fair Employment and Housing (DFEH), the agency tasked with enforcing FEHA, recommends that employers temporarily waive medical documentation requirements if it is impracticable for an employee to reasonably obtain documentation of a COVID-19-related disability.
- See [DFEH reasonable accommodation request form](#).

## Where can I go to learn more about reasonable accommodations?

- See [reasonable accommodation page on DFEH website](#).
- See [Equal Employment Opportunity Commission Enforcement Guidance: Reasonable Accommodation & Undue Hardship Under the ADA](#).



## WORKERS' COMPENSATION

### California Workers' Compensation System, Cal. Lab Code § 3200 et seq.

- With few exceptions, the Workers' Compensation system is the sole and exclusive remedy of an employee (or their dependents) against an employer for work-related death or injury.
- An eligible employee with a work-related injury or illness is entitled to partial wage replacement while they are recovering. A covered employer will also be required to pay for the employee's medical treatment.
- Senate Bill 1159 provides that all California employees who work outside their home at the direction of their employer between July 6, 2020 and January 1, 2023 and who test positive for COVID-19 within 14 days of working at their jobsite during an *outbreak* at their specific workplace are presumed to have contracted any COVID-19-related illness at work for purposes of awarding workers' compensation benefits. An outbreak exists if, within 14 days of an employee testing positive, one of the following occurs at a specific place of employment:
  - (1) four employees test positive if the employer has 100 employees or fewer;
  - (2) four percent (4%) of the number of employees who reported to the specific place of employment test positive if the employer has more than 100 employees; or
  - (3) a specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, **or a school superintendent** due to a risk of COVID infection. See Cal. Labor Code § 3212.88.
- If an employee does not qualify for the presumption under SB 1159, they may still be eligible to receive workers' compensation benefits if they contracted COVID-19 at work. The employee will need to meet certain threshold requirements, including proving that their illness arose out of their employment.
- If you believe you contracted COVID-19 through work, notify your employer as soon as possible and promptly file a workers' compensation claim form with the employer.
- Although CTA's Group Legal Services Program does not cover Workers Compensation claims, CTA maintains a referral list of trusted employee-side Workers Compensation attorneys. Your CTA Primary Contact Staff can assist you if you wish to be referred to one of these attorneys.
- See [Workers' Compensation Presumption \(SB 1159\) FAQs](#), and [California Division of Workers Compensation Guide to filing a Workers Compensation claim](#).

