

No. _____



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: First Reading of Policy DEC (LOCAL): Compensation and Benefits: Leaves and Absences

SUBMITTED BY: Juan J. Cruz **OF** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: February 20, 2008

RECOMMENDATION:

It is recommended that the Board of Trustees approve First Reading of Policy DEC (LOCAL): Compensation and Benefits: Leaves and Absences

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

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TYPES OF LEAVE

The District shall operate a local leave program serving all employees of the District. The leave program shall consist of three types: bereavement leave, state and local sick leave and vacation leave.

<u>Types of Leave</u>	<u>Paid/Unpaid</u>	<u>Number of Days Paid</u>
<u>State Personal Leave</u> <u>[See DEC(LEGAL)]</u>	<u>Paid</u>	<u>5 days per year</u>
<u>Local Personal Leave</u> <u>10-month employees</u> <u>11-month employees</u> <u>12-month employees</u>	<u>Paid</u>	<u>5 days per year</u> <u>6 days per year</u> <u>7 days per year</u>
<u>Temporary Disability</u> <u>All leave-eligible employees</u> <u>For full-time educators, temporary disability shall be in accordance with Education Code 21.409. may be granted to other District employees with limitations established at TEMPORARY DISABILITY below</u>	<u>Unpaid</u>	<u>180 calendar days</u>
<u>Bereavement Leave</u> <u>(as defined on Page 2)</u>	<u>Paid</u>	<u>3 days per event</u>
<u>Vacation Leave</u> <u>For 12-month auxiliary employees only</u> <u>See DED (Local)</u>	<u>Paid after a full year of service</u>	<u>10 days</u>

COMPREHENSIVE LEAVE

The District's comprehensive leave program includes both paid leave and unpaid leave privileges. Eligibility for the various types of leave depends on the employee's position, the number of months of service per year, and the length of service. [See also DED(LOCAL) for provisions on vacation leave].

COMPENSATED LEAVE

In addition, employees may be absent without loss of pay and without the absence being charged against the employee's

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accrued accumulated leave for assault leave, bereavement leave, jury duty, witness subpoenas, as specified below.

Paid leave provisions apply to all salaried and eligible hourly employees. Eligible hourly employees are those in standing, daily assignments that meet the criteria for membership in the Teacher Retirement System (TRS) of Texas. [See TRS Eligibility Requirements]

Paid leave provisions do not apply to individuals whose positions do not meet TRS eligibility criteria. Personnel on less than a 12-month contract who are employed for additional periods of duty on a noncontract status during the summer months are not eligible to use or to accrue personal leave during these periods.

ACCUMULATION AND
TRANSFERABILITY

Both state and local leave may accumulate without limit. Unused state leave is transferable among districts as part of the employee service record; local leave is not transferable.

LEAVE ACCRUAL AND
ADVANCEMENT

Only those days/hours that are part of the base employment year/regular workday shall be included in the calculation of state and local leave. Extra days for supplemental duties/overtime hours shall not entitle personnel to additional leave. State and local leave will be prorated for employees beginning after the regular employment term.

DEFINITIONS
FAMILY

The term "immediate family" shall include:

1. Spouse
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, sibling-in-law.
5. Grandparent and grandchild.
6. Any person related to the employee by blood or marriage who is residing in the employee's household at the time of illness or death.

For purposes of the Family and Medical Leave Act, the definition of "family" includes only spouse, parent, and child.

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FAMILY EMERGENCY	The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.
WORKDAY	A "workday" for purposes of accumulation, use, or recording shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.
STATE PERSONAL LEAVE — RATE OF ACCRUAL	Each employee shall earn state personal leave at the rate of one-half workday for each 18 workdays of employment, up to the statutory maximum of five workdays annually.
TYPES OF STATE PERSONAL LEAVE	The Board requires employees to differentiate between uses of personal leave:
DISCRETIONARY	1. To be taken at the individual employee's discretion, subject to limitations set out below.
NON- DISCRETIONARY	2. To be used for the same reasons and in the same manner as state sick leave accumulated prior to May 30, 1995. [See DEC(LEGAL)]
USE OF DISCRETIONARY LEAVE	A written request for discretionary personal leave shall be submitted to the immediate supervisor or designee in advance in accordance with administrative regulations. The reasons for which personal leave may be used shall not be limited by the District. In deciding to approve personal leave, however, the supervisor or designee shall consider the effect of the employee's absence on the educational program, as well as the availability of substitutes. <u>The principal/supervisor or designee shall notify the employee in advance whether the request is granted or denied.</u>
REQUEST FOR LEAVE	<u>A maximum of five percent of campus employees in each category may be permitted to be absent at the same time for discretionary personal leave.</u>
DURATION OF LEAVE	Discretionary personal leave in excess of two consecutive days must have prior approval by the Superintendent or designee.
SCHEDULE LIMITATIONS	Discretionary personal leave shall not be allowed during the first week of a new semester, the day before or the day after a school holiday, days scheduled for end-of-semester or end-of-year examinations, days scheduled for TAKS <u>state-mandated assessments</u> tests, <u>and days scheduled for District scheduled assessments</u> , or on professional or staff development days.
LOCAL LEAVE	Employees in positions normally requiring ten, eleven, or twelve months of service shall earn an additional five, six, or seven equivalent workdays of local personal leave per school year.

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respectively, concurrently with state leave. For purposes of this policy, months of employment shall be as follows:

183–193 contract/assignment days	— 10 months	5 days
207–220 contract/assignment days	— 11 months	6 days
226+ contract/assignment days	— 12 months	7 days

Local leave shall accumulate with no limit and shall be taken with no loss of pay.

All local sick leave earned and carried over at the end of the 1996–97 school year, as well as local leave earned during the 1997–98 school year, shall become local personal leave. Local personal leave shall be used under the terms and conditions applicable to state personal leave.

CATASTROPHIC
LEAVE POOL

A catastrophic leave pool is the voluntary donation of local personal leave days by employees for the purpose of assisting a fellow employee who, after exhausting all paid leave including sick leave bank days, has a catastrophic illness or has an immediate family member who has a catastrophic illness.

DEFINITIONS

For purposes of the Catastrophic Leave Pool, the following definitions shall apply:

1. **Catastrophic illness:** an illness such as heart attack, stroke, cancer, or any life-threatening illness as certified by a health care provider
2. **Year:** the period from September through August

RESTRICTIONS

For purposes of the Catastrophic Leave Pool, the following restrictions shall apply:

1. Employees may donate no more than ~~ten~~ **thirty (30)** local and state personal leave days per school year.
2. An eligible employee may draw from the pool until he or she has used up to 30 days.

CONFIDENTIALITY

All contributions to sick leave pools shall be voluntary and confidential donations. Employees violating this provision shall be considered in violation of District policy and the standards of ethics outlined at DH (EXHIBIT) and shall be subject to disciplinary action in accordance with DH (LOCAL).

CESSATION OF
POOL

The pool shall cease to exist when:

1. The employee returns to work,
2. The employee has used 30 days, or

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3. Voluntary donation reaches the ten-day maximum contribution and the sick leave pool is exhausted.

Unused sick leave pool days shall revert to donors and shall be divided proportionately among individuals according to the amount contributed.

MILITARY LEAVE

Employees of the District who are granted a leave of absence from work due to a voluntary or involuntary enlistment in the military to serve the country at war shall receive "differential pay" from the District for a period of 12 calendar months. For this purpose, differential pay shall mean the normal daily wage earned by the employee for the position held prior to enlistment minus the employee's earned daily wage from the U.S. government. In order to receive differential pay, employees must submit verification of their military earnings to the Department of Human Resources. Employees who receive a higher daily wage from the government than from the District shall not be entitled to differential pay.

BEREAVEMENT LEAVE

During a full-time employee's ~~contract~~ annual term of employment, approved leave for death in the immediate family (as defined on page 2) shall be limited up to five consecutive workdays for each occurrence, subject to the approval of the Superintendent or designee. The employee shall be required to present documentation to justify such leave. The first three workdays missed shall be without loss of pay and without deduction from the employee's leave balance. The remaining two (2) days shall be deducted from the employee's leave balance. Additional days for all other funerals shall be deducted from the employee's leave balance. Bereavement leave shall not be cumulative.

SICK LEAVE BANK

The District has elected to provide a sick leave bank for all personnel who elect to participate in the bank and who earn sick leave benefits from the District. The purpose of the bank shall be to provide additional sick leave days to members of the bank in the event of an unexpected extended critical illness, surgery, or a disability due to an injury. Days shall be requested from the bank only after the member has exhausted noncontract term days and accumulated state and local sick leave days. An employee may be awarded a maximum of 30 days from the sick leave bank during the fiscal year. (September through August)

USE AND RECORDING

For purposes of personal illness, illness in the immediate family, family emergency, or death in the immediate family, available leave shall be used in the following order:

1. Compensatory leave (if applicable).

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2. Local personal leave.
3. State personal leave.
4. State sick leave accumulated prior to the 1995-96 school year.
- ~~5. Transferred state leave.~~
5. Noncontract/employment days. [See DED(LOCAL)]
6. Sick leave bank.

Leave used shall be recorded in increments of half days. Employees shall be charged leave as used even if a substitute is not employed.

Any leave taken for which leave balances are insufficient shall result in a deduction from the employee's paycheck commensurate with the amount of leave taken; if, however, there are more than five days to be deducted, only five shall be deducted, with the remainder being deducted the following month, unless otherwise provided. [See DMD(LOCAL)]

Local sick leave may also be used for first-year care following the birth or adoption of an employee's son or daughter or the placement of a child with the employee for foster care.

AVAILABILITY

Paid leave for the current year shall be available for use at the beginning of the school year. Paid leave shall not be approved for more workdays than have been accumulated in prior years plus those to be earned during the current year. When an employee who has used more leave than he or she had accumulated ceases to be employed by the District, the cost of the unearned leave days shall be deducted from the employee's final paycheck. If insufficient funds exist in the last paycheck, the employee shall be required to refund the overpayment.

MEDICAL
CERTIFICATION

An employee absent more than five consecutive workdays because of personal illness or illness in the immediate family shall present medical certification to the human resources department upon returning to work.

Certification by a doctor who is duly registered and licensed under the Medical Practice Act of Texas, a licensed chiropractor, a Christian Scientist practitioner, or a licensed podiatrist (chiropractist) shall be required for personal illness absences in excess of five consecutive duty days. Absences in excess of five days are subject to verification by the District's Department of Human Resources.

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HEALTH CARE PROVIDER	Medical certification shall be made by a health care provider as defined by the Family and Medical Leave Act. [See DEC(LEGAL)]
TEMPORARY DISABILITY LEAVE <u>EDUCATORS</u>	All full-time employees shall be eligible for temporary disability <u>(unpaid)</u> leave. The maximum length of temporary disability leave shall be 180 calendar days. <u>A temporary disability (unpaid) leave may be granted also to other eligible employees for a maximum of 180 calendar days, upon approval by the Superintendent or designee. Application for this leave shall be submitted in accordance with the established administrative procedures. Reinstatement to regular employment shall be on a position-available basis only.</u>
<u>OTHER EMPLOYEES</u>	<u>An employee reaching the end of the temporary disability leave period shall provide 30 calendar days timely written notice, of his or her intention to resume active duty or to request an extension of leave pursuant to the Americans with Disabilities Act.</u> <u>Failure to comply with the time notification provisions shall constitute good cause for termination of contract employees, in accordance with law and District policies. [See DF policy series]</u>
UNPAID LEAVE	Each application for unpaid personal illness leave must be submitted in writing to the Superintendent and must include certification from a health care provider of the employee's inability to perform work-related duties.
REASSIGNMENT FOLLOWING LEAVE	Employees who are not certified by SBEC and who are returning from unpaid personal illness of 60 or fewer calendar days shall be returned to the same position. Unless otherwise prescribed by law, employees returning from unpaid personal illness leave in excess of 60 calendar days shall be given priority for assignment to a comparable position as determined by the Superintendent or designee based on the needs of the District.
JURY DUTY	Employees shall be required to present documentation of jury duty and shall be allowed to retain any compensation for this service. <u>An employee shall be granted leave with pay and without loss of accumulated leave for jury duty. Absences for court appearances related to an employee's personal business that is not school-related shall be deducted from the employee's personal leave or shall be taken by the employee as leave without pay.</u>

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COURT
APPEARANCES

~~Absences for court appearances related to an employee's personal business shall be deducted from the employee's leave or, at the option of the employee, shall be taken as leave without pay.~~

FAMILY AND MEDICAL
LEAVE

For purposes of an employee's entitlement to family and medical leave, the 12-month period shall be measured backward from the date an employee uses family and medical leave.

All employees are required to contact the Department of Human Resources to request FMLA leave. If an employee's leave is foreseeable and he or she fails to submit the required medical certification within 15 days of receipt of request for such leave, the employee's family and medical leave may be delayed until the required certification is provided. If repeated requests for the certification are ignored, family and medical leave may be denied.

If the need for leave is not foreseeable, an employee must provide the medical certification within 15 days of receipt of request for such leave or as soon as reasonably possible under the particular facts and circumstances. If an employee fails to submit the required medical certification within a reasonable time under the pertinent circumstances, the continuation of family and medical leave may be delayed. If certification is never provided, the leave shall not constitute family and medical leave and shall result in a review of the period of absence for appropriate disciplinary action, which may include termination.

If the condition preventing the employee from attending work qualifies for Family and Medical Leave, the District shall classify any leave taken as FMLA leave. If the employee exhausts all paid leave and is still unable to return to work, he or she may be placed on temporary disability leave.

CONCURRENT USE
OF LEAVE

The District shall require employees to use family and medical leave concurrently with paid leave and with temporary disability leave if applicable.

COMBINED LEAVE
FOR SPOUSES

If both spouses are employed by the District, family and medical leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition may be limited to a combined total of 12 weeks as determined by the needs of the District.

**VERIFICATION
OF FAMILY
RELATIONSHIP**

Employees requesting leave for the birth or placement of a child with an employee for adoption or state-approved foster care, or to care for a family member with a serious health condition, may be required to provide reasonable documentation of a family relationship. The Department of Human Resources will inform employees of any need for such verification.

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FITNESS-FOR-DUTY
CERTIFICATION

Upon returning to work from a medical leave of absence of more than five (5) consecutive work days duration, all employees will be required to provide certification from the employee's health care provider that the employee is able to return to work. The cost, if any, of a fitness-for-duty certification shall be borne by the employee. Failure to provide the required return to work certification may result in a delay of job restoration until the certification is provided.

COUNTING FMLA
LEAVE

If an employee chooses to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave. [See DEC(LEGAL) for Family and Medical Leave provisions]

WORKING WHILE ON
LEAVE

With the exception of non-contract and/or paid vacation leave, while on any type of leave status with the District, the employee may not perform work in any capacity except as approved by the Assistant Superintendent of Human Resources or designee as part of an approved return-to-work or transitional duty assignment at the District.

Working during a leave of absence shall be considered a violation of the District's leave policy and may be grounds for immediate termination of at-will employees or recommendation of termination for contract employees.

EMPLOYMENT
FOLLOWING LEAVE

Professional, noncontract employees, classified employees, auxiliary employees, or permanent part-time employees qualifying for unpaid personal illness leave that is not covered by family and medical leave may return to a previously vacated position, subject to availability, upon release to return to work. If a position with the same job title is unavailable, the employee shall be separated and may apply for any vacancy for which he or she is responsibly qualified. Additionally, some jobs require the employee to submit to a District-paid fitness-for-duty evaluation wherein the employee must demonstrate the ability to meet all the essential physical requirements of his or her job.

INTERMITTENT
LEAVE FOR CHILD
CARE

Use of intermittent family and medical leave shall be permitted for the care of a newborn child or upon the adoption or placement of a child with the employee.

CERTIFICATION OF
ILLNESS

Upon request for family and medical leave for the employee's serious health condition or that of a spouse, parent, or child, the employee shall provide medical certification of the illness or disability.

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Employees may also be required to provide medical certification of the illness or disability or, where applicable, workers' compensation release forms at 30-day intervals.

MEDICAL RELEASE

The employee's request for reinstatement shall be accompanied by medical certification of the employee's ability to perform essential job functions or workers' compensation release forms, where applicable.

TEACHER
REINSTATEMENT

A teacher desiring to return to work at or near the conclusion of a semester shall be reinstated in accordance with the END-OF-TERM LEAVE section in DEC(LEGAL).

FAILURE TO
RETURN

If, at the expiration of the family and medical leave, the employee is able to return to work but chooses not to do so, the District shall require reimbursement of the employee benefits contribution made by the District during the period in which such leave was taken as unpaid leave.

WORKERS'
COMPENSATION

An employee absent because of a job-related injury or illness shall be assigned to family and medical leave, if applicable.

An employee's Family and Medical Leave entitlement shall run concurrently with a workers' compensation absence if the injury is classified as a serious health condition.

ASSAULT LEAVE

Assault leave, during which the employee's workers' compensation wage benefits shall be supplemented by the District up to the preassault weekly salary, with no deduction from the employee's accumulated paid leave benefits, shall run concurrently with family and medical leave.

PAID LEAVE
OFFSET

The employee shall inform the appropriate administrator whether he or she chooses to use available paid leave. Any paid leave used shall be offset against workers' compensation wage benefits. [See CRE]

REIMBURSEMENT AT
RETIREMENT
(to be deleted after the
completion of the
2007-2008 school year)

Effective January 1, 1998, employees who have worked a minimum of five years for the District and have elected to take a retirement option with the Texas Teacher Retirement System (TRS) within 30 days of their last day of employment with the District shall be eligible to receive reimbursement for unused state and local personal leave. Reimbursement shall be for a maximum of 80 days at the rate of \$30 per day. Payment shall not be made until 45 days after the date of retirement as verified by TRS.

ATTENDANCE
INCENTIVE PLAN

Subject to appropriate and necessary funding, beginning with the 2008-2009 school year, the District may "buy-back" any accrued but unused state leave from employees, in accordance with options of the Attendance Incentive Plan

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described below. Employees wishing to participate in any of these options shall apply in writing, observing time lines and following procedures specified by the payroll department.

All state personal leave days surrendered to the District in exchange for a cash payment shall be permanently deducted from the employee's leave bank. The days surrendered may not be taken as leave or transferred to another school district.

OPTION 1

BUY-BACK AT
END OF SCHOOL
YEAR

Subject to appropriate and necessary funding, beginning with the 2008-2009 school year, the District shall offer a cash "buy back" attendance incentive plan under the following conditions:

1. Employee must not be absent more than five (5) full days of employment;
2. District shall buy back only state or local days earned by the Employee during the work/school year;
3. District shall buy unused local personal days first followed by state personal leave days up to five (5) days per school/work year.

The cash value of each employee's day of leave for "buy-back" purposes shall be one hundred dollars (\$100.00) per day for professional employees and seventy-five dollars (\$75.00) per day for paraprofessional and auxiliary employees.

Requirements for payment of unused state or local personal leave days shall be published by the Human Resources Department annually.

OPTION 2

FULL BUY-BACK
AT RETIREMENT

Beginning with the 2008-2009 school year, an employee who has been employed with the District for five (5) full school years and who is in good standing that retires in accordance with provisions of the Teacher Retirement System of Texas shall receive cash payment for any accrued state and local personal leave for a maximum reimbursement of 80 days at the rate of \$100.00 per day for professional employees and \$75.00 per day for paraprofessional and auxiliary employees.

This benefit will be calculated automatically upon retirement for each employee who completes an affidavit certifying that he or she is retiring under the Teacher Retirement System (TRS). Verification shall be obtained from TRS that the employee actually retired before the benefits are granted. Payment shall not be made no later than 45 calendar days after the date of retirement as verified by TRS.

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These retirement benefits shall not be available to an employee under investigation and is found to have committed wrongdoing, or whose employment is terminated by the District, or who resigns or retires in lieu of termination or nonrenewal.

TARDINESS

Employees are expected to arrive at work at the time designated by their supervisors. Unexcused or excessive tardiness may result in disciplinary action, including termination of employment.

UNAUTHORIZED
ABSENCE

An employee may be terminated when he or she is:

1. Released by a doctor to return to work but fails to contact the District's Department of Human Resources to pursue a work assignment; or
2. Unable to report to work and fails to request or extend a leave of absence; or
3. Unable to report to work and has no earned paid leave available and, if eligible to apply for leave of absence does not request a leave.

The uniform enforcement of a reasonable absence-control policy is not retaliatory discharge.

FREQUENT OR
PROLONGED
ABSENCE

All absences in excess of ten days during a semester shall be investigated by the immediate supervisor who shall take appropriate action as required by District guidelines.

Supervisors shall report absences for individuals in excess of 20 days in a school year to the Superintendent or designee who shall take whatever action is deemed appropriate. Such action may result in disciplinary action, including termination of employment.

DOCUMENTATION
FOR ABSENCE

Documentation may be required for any absence at the discretion of the Superintendent or designee.

FREQUENT OR
PROLONGED
ABSENCE

An employee working in a position that requires use of the District's automated online and/or telephonic absence reporting system must use the system to report all absences. Additionally, any employee who is absent three or more days must make personal phone contact with his or her immediate supervisor by the third day of absence.

SANCTIONS FOR
ABUSE

All employee leave is provided for the specific purpose stipulated in this policy. It is not intended to be used as a vacation, or for mere convenience. Except for discretionary state personal leave, documentation may be required for any absence at the discretion of the Superintendent or designee. Abuse of the employee leave program is a violation of District

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policy and may result in disciplinary action up to and including loss of pay, suspension, demotion, or termination of employment, in accordance with appropriate District policies. [See DCD and the DF series]

EXPIRATION OF
AVAILABLE LEAVE

Upon the expiration of all leave for which an employee has applied and is eligible, if the employee has not already returned to work, the District shall notify the employee in writing that his or her leave has expired.

The employee has ten (10) calendar days within which to apply for any leave for which the employee may be eligible or to notify the District in writing that the employee is ready, willing, and able to return to work. A medical clearance showing that the employee is physically able to perform the essential functions of his or her position, with reasonable accommodations if necessary, is required to return to work. Additionally, some jobs require the employee to submit to a District-paid fitness-for-duty evaluation wherein the employee must demonstrate the ability to meet all the essential physical requirements of his or her job.

An at-will employee who does not receive approval of such additional leave and who does not report and document his or her availability and fitness to return to work within such ten-day period shall be deemed to have voluntarily resigned his or her employment with the District, effective immediately upon the expiration of the ten-day period designated in such notice, and shall be offered health benefits according to COBRA. [See CRD]

An at-will employee who fails to return to work after 180 calendar days of leave, regardless of the type of leave, shall be deemed to have voluntarily resigned his or her employment with the District, and shall be offered health benefits according to COBRA.

A contract employee's failure to receive approval of such additional leave and his or her subsequent failure to report and document his or her availability and fitness to return to work, within such ten-day period, shall be considered good cause for termination. A contract employee's failure to return to work after 180 calendar days of leave, regardless of the type of leave, shall be considered good cause for termination. For termination procedures and rights of contract employees, see DF series and DCE.