

## Educational Support Personnel

### Sick Days, Vacation, Holidays, and Leaves <sup>1</sup>

Each of the provisions in this policy applies to all educational support personnel to the extent that it does not conflict with an applicable collective bargaining agreement or individual employment contract or benefit plan; in the event of a conflict, such provision is severable and the applicable bargaining agreement or individual agreement will control.

### Sick and Bereavement Leave <sup>2</sup>

Full or part-time educational support personnel who work at least 600 hours per year receive 10 paid sick leave days per year. Part-time employees will receive sick leave pay equivalent to their regular

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<sup>1</sup> State or federal law controls this policy's content. This policy contains an item on which collective bargaining may be required. Any policy that impacts upon wages, hours, and terms and conditions of employment, is subject to collective bargaining upon request by the employee representative, even if the policy involves an inherent managerial right.

This policy is consistent with the minimum requirements of State law. The local collective bargaining agreement may contain provisions that exceed these requirements. The introductory paragraph recognizes that an applicable collective bargaining agreement or individual employment contract will supersede a conflicting provision of the policy. Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the applicable collective bargaining agreement."

Districts must coordinate leaves provided by State law and the local bargaining agreement with the leave granted by the Family and Medical Leave Act (FMLA) (29 U.S.C. §2612), amended by Sec. 565 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84). The FMLA grants eligible employees 12 weeks unpaid leave each year for: (1) the birth and first-year care of a child; (2) the adoption or foster placement of a child; (3) the serious health condition of an employee's spouse, parent, or child; (4) the employee's own serious health condition; (5) the existence of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces; and (6) to care for the employee's spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness. The definition of covered servicemember includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." 29 U.S.C. §2611. Districts are permitted to count paid leave (granted by State law or board policy) taken for an FMLA purpose against an employee's FMLA entitlement. 29 C.F.R. §825.207. See policy 5:185, *Family and Medical Leave*.

A plethora of State laws grant leaves to employees of the State and municipalities, but are not applicable to school districts, including the Employee Blood Donation Leave Act (820 ILCS 149/), Local Government Disaster Service Volunteer Act (50 ILCS 122/), Organ Donor Leave Act (5 ILCS 327/), and Civil Air Patrol Leave Act (820 ILCS 148/).

<sup>2</sup> This section contains the minimum benefits provided by 105 ILCS 5/24-6. Each specified number of days in this section is the statutory minimum. The School Code does not address whether an employee's 10 paid sick leave days are available upon employment, accrued over months, or after working for a certain period of time, e.g., one year. Also be aware that the Employee Sick Leave Act (820 ILCS 191/~~added by P.A. 99-841~~) allows employees to use employer-provided sick leave to care for an ill or injured family member or to attend a medical appointment with a family member. The law defines family members as a child, stepchild, spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent. *Id.* at 191/10(b). Leave may be taken under the same terms for which the employee would be permitted to take leave for his or her own illness or injury. Before adopting this policy or applying its provisions, the district should examine any applicable bargaining agreements. Strict accounting of unused sick days is important to avoid:

1. Employees accumulating sick time on a full-time basis when they are truly working part-time hours;
2. Inconsistent treatment; and
3. Inaccurate reporting to IMRF (credit is given for full day unused sick days upon retirement). 40 ILCS 5/7-139(a)(8).

workday. Unused sick leave shall accumulate to a maximum of 180 days, including the leave of the current year. <sup>3</sup>

Sick leave is defined in State law as personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption, or placement for adoption. The Superintendent and/or designee shall monitor the use of sick leave.

As a condition for paying sick leave after three days absence for personal illness or 30 days for birth or as the Board or Superintendent deem necessary in other cases, the Board or Superintendent may require that the staff member provide a certificate from: (1) a physician licensed in Illinois to practice medicine and surgery in all its branches, (2) a chiropractic physician licensed under the Medical Practice Act, (3) ~~an licensed advanced practice registered nurse who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice registered nurse to perform health examinations,~~ (4) a licensed physician assistant who has been delegated the authority to perform health examinations by his or her supervising physician, or (5) if the treatment is by prayer or spiritual means, a spiritual adviser or practitioner of the employee's faith. If the Board or Superintendent requires a certificate during a leave of less than three days for personal illness, the District shall pay the expenses incurred by the employee.

The use of paid sick leave for adoption or placement for adoption is limited to 30 days unless a longer leave is provided in an applicable collective bargaining agreement. The Superintendent may require that the employee provide evidence that the formal adoption process is underway. <sup>4</sup>

#### Vacation <sup>5</sup>

Twelve-month employees shall be eligible for paid vacation days according to the following schedule:

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<sup>3</sup> As this policy is consistent with the minimum requirements of State law, this provision on the maximum number of sick days that may be accumulated is based on the minimum number required as stated in 105 ILCS 5/24-6. The number may be increased to meet or exceed the number IMRF will recognize for retirement credit purposes. The following alternative does this: "Unused sick leave shall accumulate to the maximum number of days that IMRF will recognize for retirement credit purposes."

The following optional provisions apply to boards that want to address the IMRF's requirement that public bodies must have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement. See 40 ILCS 5/7-139(a)(8). See also IMRF General Memorandum #555 at:

[www.imrf.org/en/publications-and-archive/general-memos/2007-general-memos/general-memo-555](http://www.imrf.org/en/publications-and-archive/general-memos/2007-general-memos/general-memo-555)

**Option 1:** No collective bargaining agreement applies and the board wants to publicize its written plan. Insert the following sentence: This policy is the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon a District employee's retirement under the Ill. Municipal Retirement Fund.

**Option 2:** A local collective bargaining agreement contains the written plan and the board wants to publicize it. Insert the following sentence: Please refer to the applicable collective bargaining agreement(s) for the District's written plan allowing eligible employees to convert eligible accumulated sick leave to service credit upon an employee's retirement under the Ill. Municipal Retirement Fund.

**Option 3:** A district maintains two separate sick leave plans, one for employees under a collective bargaining agreement, and one for non-unionized employees. Insert the text for both Option 1 and Option 2.

**Note:** If Options 1, 2, or 3 are chosen, add 40 ILCS 5/7-139 to the Legal References. If the board does not have a written sick leave plan for purposes of IMRF sick leave to service credit conversion or does not wish to include it in the policy, do not include any of the options above or add the citation to the Legal Reference.

<sup>4</sup> 105 ILCS 5/24-6, amended by P.A. 100-513.

<sup>5</sup> State law does not require districts to give employees vacations.

<u>Length of Employment</u>		<u>Monthly Accumulation</u>	<u>Maximum Vacation Leave Earned Per Year</u>
<u>From:</u>	<u>To:</u>		
Beginning of year 2	End of year 5	0.83 Days	10 Days per year
Beginning of year 6	End of year 15	1.25 Days	15 Days per year
Beginning of year 16	End of year	1.67 Days	20 Days per year

Part-time employees who work at least half-time are entitled to vacation days on the same basis as full-time employees, but the pay will be based on the employee's average number of part-time hours per week during the last vacation accrual year. The Superintendent will determine the procedure for requesting vacation.

Vacation days earned in one fiscal year must be used by the end of the following fiscal year; they do not accumulate. Employees resigning or whose employment is terminated are entitled to the monetary equivalent of all earned vacation. <sup>6</sup>

Holidays <sup>7</sup>

Unless the District has a waiver or modification of the School Code pursuant to Section 2-3.25g or 24-2(b) allowing it to schedule school on a holiday listed below, District employees will not be required to work on:

- |                                   |                  |
|-----------------------------------|------------------|
| New Year's Day                    | Labor Day        |
| Martin Luther King Jr.'s Birthday | Columbus Day     |
| Abraham Lincoln's Birthday        | Veteran's Day    |
| Casimir Pulaski's Birthday        | Thanksgiving Day |
| Memorial Day                      | Christmas Day    |
| Independence Day                  |                  |

A holiday will not cause a deduction from an employee's time or compensation. The District may require educational support personnel to work on a school holiday during an emergency or for the continued operation and maintenance of facilities or property.

Personal Leave <sup>8</sup>

Full-time educational support personnel have one paid personal leave day per year. The use of a personal day is subject to the following conditions:

1. Except in cases of emergency or unavoidable situations, a personal leave request should be submitted to the Building Principal three days before the requested date.

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<sup>6</sup> Required by 820 ILCS 115/5 and 56 ILLAdmin.Code §300.520 (Earned Vacations).

<sup>7</sup> Holidays are listed in 105 ILCS 5/24-2. For information on the waiver process, see 2:20-E, *Waiver and Modification Request Resource Guide*. Holidays not specified in the statute may be added to the policy; however, boards adding additional holidays should monitor and review to ensure the list remains current.

A State-mandated school holiday on *Good Friday* is unconstitutional according to *Metz v. Leininger*, 57 F.3d 618 (7th Cir. 1995). Closing school on religious holidays may be permissible for those districts able to demonstrate that remaining open would be a waste of educational resources because of widespread absenteeism. Also, districts may be able to close school on Good Friday by adopting a *spring holiday* rationale or ensuring that it falls within spring break. School districts should discuss their options, including the collective bargaining implications, with their board attorney.

<sup>8</sup> State law does not address personal leave. It is not uncommon for boards to grant educational support personnel the same number of personal leave days as are granted to professional staff.

2. No personal leave day may be used immediately before or immediately after a holiday, or during the first and/or last five days of the school year, unless the Superintendent grants prior approval.
3. Personal leave may not be used in increments of less than one-half day.
4. Personal leave is subject to any necessary replacement's availability.
5. Personal leave may not be used on an in-service training day and/or institute training days.
6. Personal leave may not be used when the employee's absence would create an undue hardship.

Leave to Serve as a Trustee of the Illinois Municipal Retirement Fund

Upon request, the Board will grant 20 days of paid leave of absence per year to a trustee of the Ill. Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3. <sup>9</sup>

Other Leaves

Educational support personnel receive the following leaves on the same terms and conditions granted professional personnel in Board policy 5:250, *Leaves of Absence*:

1. Leaves for Service in the Military and General Assembly. **10**
2. School Visitation Leave. **11**
3. Leaves for Victims of Domestic ~~or Sexual Violence~~, Sexual Violence, or Gender Violence. **12**
4. Child Bereavement Leave. **13**
5. Leave to serve as an election judge. **14**

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<sup>9</sup> Required by 105 ILCS 5/24-6.3. A similar leave exists for an elected trustee for the Ill. Teachers' Retirement System. See 5:250, *Leaves of Absence*.

<sup>10</sup> Military leave is governed by the School Code (105 ILCS 5/10-20.7b, 5/24-13, and 13.1); the Service Member Employment and Reemployment Rights Act (330 ILCS 61/, added by P.A. 100-1101, streamlining several job-related protection laws into one statute, mandating leave for *active service* and requiring the public employer to make up the difference between military pay and regular compensation); and the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301 *et seq.*).

Granting General Assembly leave to ESPs is optional.

<sup>11</sup> 820 ILCS 147/, amended by P.A. 101-486, eff. 8-1-20. See policy 5:250, *Leaves of Absence*, and 5:250-AP, *School Visitation Leave*.

<sup>12</sup> Required by Victims' Economic Security and Safety Act (820 ILCS 180/, amended by P.A. 101-221, eff. 1-1-2000-765) and 56 Ill.Admin.Code Part §280. Important information about this leave is discussed in *f/n*s 20, 21, 19 and 22 of 5:250, *Leaves of Absence*.

<sup>13</sup> 820 ILCS 154/, added by P.A. 99-703. Important information about this leave is discussed in *f/n* 54 of 5:250, *Leaves of Absence*.

<sup>14</sup> 10 ILCS 5/13-2.5.

LEGAL REF.:

[20 ILCS 1805/30.1 et seq.](#)

105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.

[330 ILCS 6/1, Service Member Employment and Reemployment Rights Act.](#)

820 ILCS 147, School Visitation Rights Act.

820 ILCS 154/, Child Bereavement Leave Act.

820 ILCS 180/, Victims' Economic Security and Safety Act.

School Dist. 151 v. ISBE, 154 Ill.App.3d 375 (1st Dist. 1987); Elder v. Sch. Dist. No.127 1/2, 60 Ill.App.2d 56 (1st Dist. 1965).

Commented [DJ1]: Repealed by P.A. 100-1101

CROSS REF.:

5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:250 (Leaves of Absence)

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