

## General Personnel

### Temporary Illness or Temporary Incapacity 1

A temporary illness or temporary incapacity is an illness or other capacity of ill-being that renders an employee physically or mentally unable to perform assigned duties. During such a period, the employee can use accumulated sick leave benefits.<sup>2</sup> However, income received from other sources (worker's compensation, District-paid insurance programs, etc.) will be deducted from the District's compensation liability to the employee. The School Board's intent is that in no case will the employee, who is temporarily disabled, receive more than 100 percent of his or her gross salary. Those insurance plans privately purchased by the employee and to which the District does not contribute, are not applicable to this policy.

If illness, incapacity, or any other condition causes a teacher or other licensed employee to be absent in one school year, after exhaustion of all available leave, for more than 90 consecutive work days, such absence may be considered a permanent disability and the Board may begin dismissal proceedings subject to State and federal law, including the Americans with Disabilities Act.<sup>3</sup> The

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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. When a policy's subject matter is superseded by a bargaining agreement, the board policy can state, "Please refer to the applicable collective bargaining agreement." For employees not covered, the policy should reflect the board's current practice to the current ~~insert name of CBA or use a generic reference, e.g., "agreement between the bargaining representative and the School Board"~~.

<sup>2</sup> Temporary mental or physical incapacity as determined by a medical examination is not cause for dismissing a teacher. (105 ILCS 5/10-22.4 and 5/24-13).

<sup>3</sup> A teacher's contractual continued service status is not affected by an absence caused by temporary illness or temporary incapacity. (105 ILCS 5/24-13). Two cases, decided before the Americans with Disabilities Act ([ADA](#)) ([42 U.S.C. §12101 et seq.](#)) was enacted, held that this statute grants school boards the power to define, through policy, temporary illness or incapacity. *School Dist 151 v. ISBE*, [507 N.E.2d 134-154 Ill.App.3d 375 \(1st Dist.Ill.App.1, 1987\)](#); *Elder v. School Dist. No.127 1/2*, [208 N.E.2d 423-60 Ill.App.2d 56 \(1st Dist.Ill.App.1, 1965\)](#).

**Important:** Until February 2014, this paragraph in the PRESS sample policy applied to all employees. We limited its application to teachers in response to feedback that the paragraph should align with the statute. Section 24-13, which this paragraph implements, applies only to teachers and, thus, we amended the paragraph to make it applicable only to teachers. **This change may trigger a bargaining requirement with a bargaining unit for educational support personnel.**

Despite the statute's limitation to licensed employees, many boards apply this language to educational support personnel. **Consult the board attorney** about whether to apply this language to educational support personnel. For boards that wish to apply this language to both licensed and educational support personnel, strike ~~teacher or other licensed~~ from the text of the first two sentences of this paragraph and correct the grammar.

The Illinois appellate court decisions cited above upheld a board policy designating when a temporary [illness or] incapacity becomes permanent for the purpose of being a cause of dismissal. The court approved using 90 days of absence due to illness, after the exhaustion of sick days, as the point at which the district considers termination. The court upheld a hearing officer decision noting that a policy providing for a 90-school-day absence following exhaustion of sick leave was sufficient under Section 24-13. The court noted that applying that particular policy over a ~~two~~2-year period would not be appropriate because the ~~two~~2-year period would have the effect of allowing the school board to define a temporary illness or incapacity out of existence; i.e., making it impossible for a teacher to qualify for such an absence. **Important:** a district should consult the board attorney before determining that a teacher's temporary illness or incapacity became permanent.

Superintendent may recommend this paragraph's use when circumstances strongly suggest that the teacher or other licensed employee returned to work intermittently in order to avoid this paragraph's application. This paragraph shall not be considered a limitation on the Board's authority to take any action concerning an employee that is authorized by State and federal law.

Any employee may be required to have an examination, at the District's expense, by a physician who is licensed in Illinois to practice medicine and surgery in all its branches, a ~~licensed~~ advanced practice ~~registered~~ nurse, ~~who has a written collaborative agreement with a collaborating physician that authorizes the advanced practice nurse to perform health examinations,~~ or a ~~licensed~~ physician assistant ~~who has been delegated the authority by his or her supervisor to perform health examinations if the examination is job-related and consistent with business necessity.~~ <sup>4</sup>

LEGAL REF.: ~~Americans with Disabilities Act, 42 U.S.C. §12101 et seq.,~~ Americans with Disabilities Act.  
105 ILCS 5/10-22.4, 5/24-12, and 5/24-13.  
~~Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965) 60 Ill.App.2d 56 (1st Dist. 1965).~~  
~~School District No. 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987) 154 Ill.App.3d 375 (1st Dist. 1987).~~

CROSS REF.: 5:30 (Hiring Process and Criteria), 5:40 (Communicable and Chronic Infectious Disease), 5:185 (Family and Medical Leave), 5:250 (Leaves of Absence), 5:330 (Sick Days, Vacation, Holidays, and Leaves)

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The point at which any employee's temporary disability becomes permanent must be analyzed using the Americans with Disabilities Act, ~~42 U.S.C. §12101 et seq.,~~ also referred to as the ADA or the ADA Amendments Act (ADAAA) ~~(Pub. L. 110-325)~~. This federal law prohibits employers from discriminating against individuals with a disability who can perform the essential functions of a job with or without reasonable accommodation. A district should regularly analyze each position's job description to ensure that it identifies the position's essential functions. Consult the board attorney concerning compliance with the ADA.

<sup>4</sup> The State law (105 ILCS 5/24-5, amended by P.A. 100-513), allowing boards to require physicals of current employees *from time to time*, has been superseded by the ADA, 42 U.S.C. §12112(d)(4). The ADA allows medical inquiries of current employees only when they are job-related and consistent with business necessity or part of a voluntary employee wellness program. ~~(Id.)~~. Districts may deny jobs to individuals with disabilities who pose a direct threat to the health or safety of others in the workplace, provided that a reasonable accommodation would neither eliminate the risk nor reduce it to an acceptable level. ~~42 U.S.C. §12113; 29 C.F.R. Part §-1630.2(r)~~.

Note that while examination by a spiritual leader/practitioner is sufficient for leaves, the statute does not authorize an examination by a spiritual leader/practitioner for district-ordered physicals of an employee. The difference may present a constitutional issue; contact the board attorney for an opinion if the employee wants to use an examination by a spiritual leader/practitioner.