

Educational Support Personnel

Sick Days, Vacation, Holidays, and Leaves¹

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 Leave²

Please refer to the following current agreements, individual administrator employment contracts or annual salary/benefit letters provided to union-exempt staff:

Collective Bargaining Agreement Between The Board of Education Oak Park Elementary School District 97 and The Oak Park Educational Support Professionals Association

Collective Bargaining Agreement Between The Board of Education for Oak Park Elementary School District 97 and The Oak Park Teacher Assistants' Association

Collective Bargaining Agreement Between The Board of Education for Oak Park Elementary School District 97 and Local No. 73, Service Employees International Union

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ 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 Alternatively, if the policy's subject matter is superseded by a bargaining agreement, the board policy may state, "Please refer to the current [insert name of educational support CBA]."

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 (P.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." 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/).

² 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, eff. 1-1-17, 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 (biological, adopted, stepchild, or legal ward), spouse, domestic partner, sibling, parent, mother- or father-in-law, grandchild, grandparent, or stepparent (Id. at 191/10(b)). Leave may be

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Comment [KAS1]: The policy, Legal References, and footnotes are updated to address the Child Bereavement Leave Act, 820 ILCS 154/, added by P.A. 99-703 and the Employee Sick Leave Act 820 ILCS 191/, added by P.A. 99-841, eff. 1-1-17.

Comment [KAS2]: Discussion of the Employee Sick Leave Act is added to footnotes, but it is not necessary to add into the policy text.

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)).

Vacation ⁵

Please refer to the following current agreements, individual administrator employment contracts or annual salary/benefit letters provided to union-exempt staff:

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³ 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)) and see also IMRF General Memorandum #555 at:

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 ~~if a board wants to comply with the IMRF's requirement that public bodies have a written plan allowing eligible employees to convert their eligible accumulated sick leave to service credit upon their retirement.~~

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 Illinois Municipal Retirement Fund.

Option 2: ~~A~~The local collective bargaining agreement ~~may~~ contains ~~theis~~ written plan and the board wants to publicize it. ~~If it does, the board policy can refer to the agreement.~~ Insert the following sentence:

Please refer to the applicable collective bargaining agreement(s) ~~current~~ *[insert name of CBA or use a generic reference, e.g., "agreement between the bargaining representative and the School Board"]* 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 Illinois Municipal Retirement Fund.

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

If **Options 1, 2, or 3** ~~are either or both options 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.

⁴ 105 ILCS 5/24-6.

⁵ State law does not require districts to give employees vacations.

Holidays ⁷

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Personal Leave ⁸

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⁶ Required by 820 ILCS 115/5 and 56 Ill.Admin.Code §300.520 (Earned Vacations).

⁷ 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 *Metzl 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.

⁸ State law does not address personal leave.

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 Illinois Municipal Retirement Fund in accordance with 105 ILCS 5/24-6.3. ⁹

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. ¹²
- 3.4. **Child Bereavement Leave.** ¹³
- 4-5. Leave to serve as an election judge. ¹⁴

LEGAL REF.: 20 ILCS 1805/30.1 et seq.
105 ILCS 5/10-20.7b, 5/24-2, and 5/24-6.
820 ILCS 147 and 180/.
820 ILCS 154/.
School Dist 151 v. ISBE, 507 N.E.2d 134 (Ill.App.1, 1987); Elder v. School Dist. No.127 1/2, 208 N.E.2d 423 (Ill.App.1, 1965).

CROSS REF.: 5:180 (Temporary Illness or Temporary Incapacity), 5:185 (Family and Medical Leave), 5:250 (Professional Personnel - Leaves of Absence)

Comment [KAS4]: A footnote amendment is all that is necessary for this policy to manage P.A. 99-765.

Comment [KAS5]: See the discussion in policy 5:250, *Professional Personnel – Leaves of Absence*, for further information.

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⁹ 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, *Professional Personnel - Leaves of Absence*.

¹⁰ Military leave is governed by: The School Code (105 ILCS 5/10-20.7b, 5/24-13, and 5/24-13.1); the Military Leave of Absence Act (5 ILCS 325/ added mandatory leave for "other training or duty required by the United States Armed Forces" and to require the public employer to make-up the difference between military pay and regular compensation); Service Member's Employment Tenure Act (330 ILCS 60/4); Public Employee Armed Services Rights Act (5 ILCS 330/4); National Guard Employment Rights (20 ILCS 1805/30.20); and Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §4301).

Granting General Assembly leave to ESPs is optional.

¹¹ 820 ILCS 147/. See policy 5:250, *Leaves of Absence*, and administrative procedure 5:250-AP, *School Visitation Leave*.

¹² Required by Victims' Economic Security and Safety Act, 820 ILCS 180/, amended by P.A. 99-765, eff. 1-1-17, and 56 Ill.Admin.Code §280. Important information about this leave is discussed in the foot/notes 19 and 20 of policy 5:250, *Professional Personnel - Leaves of Absence*.

¹³ 820 ILCS 154/. added by P.A. 99-703. Important information about this leave is discussed in f/n 4 of policy 5:250, *Professional Personnel - Leaves of Absence*.

¹⁴ 10 ILCS 5/13-2.5, amended by P.A. 98-691.