
This section is divided into three major topics: General Human Resources Practices, Classified Personnel, and Certificated Personnel. The procedures and requirements presented as General Human Resources Practices are applicable to both classified and certificated personnel. Following this topic is separate coverage of classified and certificated personnel. The discussion of classified personnel deals with procedures for a district without a merit system. However, many of the recommendations are applicable to districts using the merit system. Certificated personnel procedures, including academic personnel procedures of community college districts, begin on page 28. [EC §§ 45240-320, 88060-139]

GENERAL HUMAN RESOURCES PRACTICES

Personnel Records

All personnel records are confidential and shall be available only to the employee, persons authorized by the employee, the district, and those authorized by the district for lawful purposes.

All employees shall have the right to examine and receive a copy at cost of all materials in their personnel file, except records relating to the investigation of criminal offenses, letters of recommendation, and ratings, reports, or records that were:

1. Obtained prior to the employment of the employee.
2. Prepared by identifiable examination committee members.
3. Obtained in connection with a promotional examination.

A classified employee shall have access to his/her numerical scores obtained from written examinations. [EC § 44031, 87031; GC § 6254(c); LC § 1198.5]

Personnel records are permanent records and must be retained by the district indefinitely, whether in paper, microform, or electronically based format. [5 CCR § 16023] (See also Records Management.)

Criminal Background Check

A school district, charter school, and county office of education have an affirmative duty to take all reasonable steps to protect their students. A criminal background check is required before any new employee begins work. Other requirements prior to appointment are discussed separately in the classified and certificated employee sections.

The governing board shall require each person to be employed to have fingerprints, together with a personal description of the applicant and the required fee, transmitted to the Department of Justice for a criminal background check. The San Diego County Office of Education (SDCOE) Human Resources Department offers Live Scan (electronic fingerprinting) and Clearinghouse services for contracted agencies (see Additional Resources). [EC §§ 45125, 45125.01, 45125.5]

No person who has been convicted of a violent or serious felony shall be employed by a school district, charter school, or county office of education. A current classified or certificated temporary, substitute, or probationary employee who has not attained permanent status and who is found to have been convicted of a violent or serious felony shall not be retained in employment. Upon notification by the Department of Justice of a conviction, immediate action must be taken to suspend or terminate such employees. Under certain specified conditions, conviction of a serious or violent felony may not be the sole reason for denial of employment or termination. [CalC Art. 1, Sec 28; EC §§ 44830.1 et seq., 45122.1; PC §§ 667.5, 1192.7]

Health and Welfare Benefits

As authorized by the governing board, the school district may pay all or part of the premiums, dues, or other charges for health and welfare benefits. These benefits may be paid for employees, their spouses or registered domestic partners and dependent children, and for retired employees. Members of the personnel commission, board members, and specified retired officers may be entitled to benefits. [FC § 297.5, GC §§ 53200-9] See Additional Resources for *In re Marriage Cases*, May 15, 2008 (S147999).

Voluntary Payroll Deductions

Written authorization from the employee is needed before payroll deductions may be made for any of the following purposes:

1. Participation in a deferred compensation program; premiums for life, disability, or legal expense insurance; and/or charges for medical and hospital service contracts for employees or dependents. [EC §§ 44041, 87040]
2. Membership dues for professional organizations. [EC §§ 45060, 45168, 88167, 87833]
3. United States savings bonds. [GC § 1157.8]
4. Deposit into an account with a state or federal bank, savings and loan association, purchase of shares in or payments of money to a credit union. [GC § 1157.9]

5. Premiums for tax-sheltered annuities. [EC §§ 44041, 87040]
6. Contributions to bona fide charitable organizations. [GC § 1157.2]

Direct Deposit

An employee may authorize the payment of salary and wages, after any withholding required by law and authorized deductions, to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice via the Automated Clearing House (ACH) program [GC § 1157.9]

Sexual Harassment Training

Each new employee shall be given a copy of the district's written policy on sexual harassment. [EC § 231.5(f)]

Employers with 50 or more employees must provide two hours of sexual harassment training and education to all supervisory employees beginning January 1, 2006, once every two years thereafter. Training must be provided to new supervisory employees within six months of their assumption of a supervisory position. Training and education must be interactive and include information and guidance on federal and state laws concerning sexual harassment, remedies available to victims of sexual harassment, and practical examples aimed at the prevention of sexual harassment. Training must be presented by trainers with knowledge and expertise in the prevention of harassment, discrimination, and retaliation. [GC § 12950.1]

Catastrophic Leave Program

A governing board or county office of education may establish a catastrophic leave program to permit its employees to donate leave credits to an employee for a specified illness or injury. A school district or county office of education and exclusive bargaining representative(s) of employees in that district or county office may agree to include in any collective bargaining agreement, a provision setting forth the requirements for a catastrophic leave program. [EC §§ 44043.5, 87045]

Travel and Transportation Expenses

Actual and necessary travel expenses shall be provided when an employee is required to be away from a regular work assignment in the course of performing services for the district. Payment shall include meals, transportation, and lodging. All such travel and expenses should be authorized in advance by the governing board or designee according to district policy. [EC §§ 1081, 44032, 87032]

When an employee is required to use a personal automobile in the performance of regularly assigned duties, the employee shall be reimbursed on a mileage or monthly basis. These rates should be established before the beginning of each school year. [EC § 44033]

Employer-Employee Relations

A public school employer shall adopt reasonable regulations for the administration of employer-employee relations. Employees who are in a unit for which an exclusive representative has been selected shall either join the recognized union or pay a fair share service fee as a condition of employment. [GC § 3540 et seq.]

Volunteers

School districts may use volunteers to provide services when they do not replace or supplant public employees. No person aged 60 years or older may be excluded from volunteer service if the person is physically, mentally, and professionally capable of performing the services involved. A person shall be deemed professionally capable if he or she can demonstrate reasonable proficiency or relevant certification and performs his or her professional duties in accordance with laws, regulations, or technical standards governing his or her area of volunteer responsibility. The governing board may require a background check of volunteers, including a fingerprint check conducted through the Department of Justice. [EC §§ 35021, 45349, 51101, 72401, 88242; GC § 3119.5]

A school district or county office of education may establish a registry of volunteer after school physical recreation instructors and other before and after school programs volunteers. To be included in the registry, registrants must submit to a criminal background check, provide and update contact information, and comply with any other requirements imposed by the district or county office. [EC § 35021.3]

CLASSIFIED PERSONNEL

A classified employee is a person employed in a position not requiring certification qualifications. Substitute and short-term employees employed and paid for less than 75 percent of a school or college year, as defined, shall not be part of the classified service. Specifically excluded from classified service are part-time playground positions, full-time and part-time students employed part-time, apprentices, and professional experts employed temporarily for a specific project regardless of the length of employment. [EC §§ 45103, 88003]

The governing board of each district is required to classify positions. It also prescribes written rules governing the management of the classified service. These regulations must be printed and made available to employees and the public. [EC § 45113]

In a school district that has adopted the merit system, the personnel commission classifies positions and prescribes written rules governing the classified service, including recruitment and selection, except where a rule may be subject to negotiation with the exclusive representative. [EC § 45260; GC § 3540 et seq.]

Application and Selection

A public announcement of all recruitments, whether open or promotional, should be posted at least seven days prior to the filing deadline stating required qualifications, class of position, and final date for filing.

Applications should be accepted on forms available in the district human resources office. Eligibility lists should be established to fill vacancies as needs arise. The names of successful candidates should be placed on a master list, and it is from this list that selections should be made.

Recommendations for employment should be based on merit, qualifications, and competency, which may be determined by interview, examinations, and/or personal reference checks. A person shall not be denied employment on the basis of race, religious creed, color, national origin, ethnicity, ancestry, sex, age, physical disability, mental disability, temporary disability (including pregnancy), medical condition, marital status, sexual orientation, gender, or any other characteristic that is contained in the definition of hate crimes in Penal Code section 422.55. [EC §§ 220, 260; GC § 12940 et seq.; 5 CCR § 4910]

The No Child Left Behind Act (NCLB) requires districts to ensure that the qualifications of paraprofessionals working in programs funded by Title I funds meet federal requirements. Para-professionals, except those conducting parent involvement activities or working as translators, must satisfy one of the following criteria: completion of at least two years of higher education, possession of at least an associate's degree, or passing state or local proficiency tests. Districts must also ensure that all paraprofessionals, regardless of their hire dates, have earned a secondary school diploma or its recognized equivalent. [20 USC § 6319; CFR § 200.58; EC §§ 45330, 45344.5, 45361.5] Districts should consult the California Department of Education Website for additional information on the State's implementation of NCLB mandates (see Additional Resources).

A retired classified employee may be employed by a school district only under specified conditions. [EC § 45135; GC §§ 21220-9] (See also Retirement.)

Appointment

All appointments must be ratified by the governing board upon the recommendation of the district superintendent. Work assignments should be made by the district superintendent.

Before an appointment may become final, the following documents and data are required from each new employee:

1. Fingerprints - New employees, including substitutes and temporary employees, must be fingerprinted. Fingerprints are submitted to the Department of Justice, where a criminal background check is conducted. [EC §§ 45125-5.01, 88024]
2. Pre-employment Physical Examination - Pre-employment physical examinations required by law or governing board regulation may be performed at district expense if the applicant is subsequently employed. Physical examinations required for continuance in employment shall be provided at the district's expense. [EC §§ 45122, 88021; GC § 12940]
3. Examination for Tuberculosis - New employees must file a certificate signed by a California-licensed physician indicating that the employee was examined within the past 60 days and is free from active tuberculosis. This examination is required once every four years so long as the employee remains skin test negative. Employees with documented positive skin test results shall not continue to take this examination. Pregnant employees are temporarily exempted. [EC §§ 45106, 49406, 87408.6, 88006]
4. Form W-4 - An employee must complete an Employees' Withholding Exemption Certificate (W-4). A Social Security number is required as an identification number for income taxes, state retirement, and payroll processing purposes.

Form W-4 or Form DE34, Report of New Employee(s), should be filed with the California Employment Development Department within 20 days of an employee's "start to work" date. [UIC § 1088.5]

5. Form I-9 (Revised 6/5/07) - The federal Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify the immigration status of all new employees. [P.L. 99-603]

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6. Constitutional Oath - New employees, except aliens legally employed, must take an oath indicating intent to support and defend the Constitutions of the United States and the State of California. [GC §§ 3101-5]
 7. Child Abuse Acknowledgement - All employees who are child care custodians or health practitioners, as defined by Penal Code section 11166.5, are required to report known or suspected instances of child abuse. Persons assigned to such positions shall sign a Child Abuse Acknowledgement form indicating their understanding of this responsibility.
 8. Drug-Free Workplace Acknowledgement - Districts are required to adopt a policy establishing a drug-free workplace and to notify employees of the provisions of this policy. [41 USC §§ 701-7; GC §§ 8350-7] Use of an acknowledgement form certifies that an employee has been informed of his or her obligations under governing board policy and state and federal law.
 9. Retirement Data - Classified employees are covered under the California Public Employees' Retirement system (CalPERS). Membership election forms must be completed at the time of employment. Employees who have previously been employed in any capacity by a school district or public agency in California are required to file a Verification of Membership Status in a California Public Retirement System. (See also Retirement.)
 10. Notice of Workers' Compensation Benefits. Districts are required to provide employees information about workers' compensation benefits at the time of hire. Most insurance carriers provide a brochure for this purpose or one can be obtained from the state Division of Workers' Compensation. Employees may be asked to complete an acknowledgement of receipt of this information. [LC §§ 3550-1]
 11. Certification of Required Vehicle Insurance and California Driver's License - Employees who may use district-owned vehicles or their private vehicles on school district business are required to have a valid California driver's license for the type(s) of vehicle to be operated. Employees who use personal vehicles for district business must meet insurance responsibility requirements. The governing board may establish levels of insurance coverage that exceed state minimum requirements. [VC § 16451]

Probationary/Permanent Status

All original appointments or promotions may be for a probation period not to exceed one calendar year. During this period, investigations, ratings, and examinations may be used to determine whether the employee is qualified for permanent status. [EC §§

45113, 88013] A probationary employee may be demoted, suspended, reassigned, or dismissed at any time during the period without a hearing before the governing board. A permanent employee serving a probationary period in a higher position should be reinstated in the former position if found unsatisfactory in the new position.

After satisfactorily serving the required probationary period, an employee must be classified as permanent. [EC §§ 45113, 88010] A permanent employee shall be subject to disciplinary action only for cause as prescribed by governing board action.

Job Specifications

Governing boards shall fix and prescribe the duties of all classified employees and other positions not requiring certification qualifications. Each new employee should be given a job description, which should contain at least the following information: [EC §§ 45109, 88009]

1. Designated title and summary statement (general summary).
2. Hours of work.
3. Location of work.
4. Description of essential functions and responsibilities and the percentage of time devoted to each duty.
5. Name and title of immediate supervisor.
6. Names and titles of persons supervised.
7. Types of equipment and tools used.
8. Licenses or certificates required.
9. Any physical, environmental, or special demands.

Categories of Employees

The governing board may create, abolish, or combine classes of employees.

Confidential Employees

A confidential employee means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties

normally require access to confidential information that is used to contribute significantly to the development of management positions. [GC § 3540.1(c)]

The Public Employment Relations Board has found that more than a fraction of the employee's time must be spent on confidential matters. The individual must have access to or possess sufficient information to warrant the conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized, and the balance in employer-employee relations distorted, if information were prematurely made public.

Supervisory Employees

A supervisory employee means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [GC § 3540.1(m)]

Management Employees

A management employee means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board. [GC § 3540.1(g)]

Senior Management Positions

The governing board may designate certain positions as senior management of the classified service. These employees shall be exempt from all provisions relating to obtaining permanent status in a senior management position. [EC §§ 45100.5, 45256.5, 88091]

Changes in Classification and Salary

The governing board shall increase the salary of any classified employee assigned to work out of classification if the period exceeds five days within fifteen calendar days. A personnel commission and governing board, or a governing board in a nonmerit system district, may, by written rule, provide for an upward salary adjustment for any classified employee required to work out of classification for any period of less than five days within fifteen calendar days. [EC §§ 45110, 88010]

Promotion

Vacancies in the higher classes of service should be filled when practicable and when it is in the best interests of the district by promotion from within the system. A written outline of the promotion procedures should be made available to all employees.

Salary and Wage Payments

Salary Schedule

Every district should annually adopt a salary schedule, and every employee should have a position on the schedule.

Hourly Rate

It is strongly recommended that classified employees working on an hourly basis, such as bus drivers and cafeteria workers, be paid at an hourly rate rather than on the basis of a projected annual salary. Difficulties arise when districts attempt to project an hourly rate to calculate an annual salary, particularly when work hours have fluctuated or an employee has been terminated.

Daily Rate

The law does not specify how the daily rate for a classified employee is computed. The method varies from district to district. It is recommended that every district review its policy on the computation of the classified employees' daily rate. The policy should be applied to all classified employees.

Overtime

Overtime compensation requirements are governed by the Education Code and the Fair Labor Standards Act (FLSA). [20 USC § 201 et seq.; EC §§ 45128-32]

Overtime for regular classified employees is defined by the Education Code to include any time required to be worked in excess of eight hours in any one day and in excess of 40 hours in any calendar week. If a governing board establishes a workday of less than eight hours but seven hours or more and a workweek of less than 40 hours but 35 hours or more for all its classified positions or for certain classes of classified positions, all time worked in excess of the established workday and workweek shall be deemed to be overtime.

Overtime is defined by the FLSA to include all hours of work in excess of 40 in a week. This standard may be used for nonregular classified employees (i.e., temporary, substitute employees exempt from classified services).

All overtime must be approved in advance by the employee's immediate supervisor and/or a designated employee. Only overtime for emergency work beyond the regular duties of an employee may receive the retroactive approval of the business office. Authorized overtime for emergency work should be reported on the daily time sheets filed with the school district.

A personnel commission or a governing board of a school district may specify certain positions or classes of positions as supervisory, administrative, or executive and exclude these employees from overtime provisions of the Education Code. Employees who are excluded from overtime provisions must clearly be serving in management positions. The governing board or personnel commission must state in writing that the duties, flexibility of hours, salary, benefit structure, and the authority of the positions are such as to set these positions apart from positions that are subject to overtime provisions and that these employees will not be unreasonably discriminated against as a result of the exclusion.

The FLSA provides for a number of exemptions from the pay provisions of the Act. These exemptions are based upon the nature of the duties performed by one individual employee and not necessarily the content of a job specification or class title. School districts must comply with exemptions as allowed by the Education Code and the FLSA.

Compensatory Time Off/Payment of Overtime

The method of payment for overtime hours is different under the FLSA than under the Education Code. FLSA requires pay at the rate of one and one-half times the employee's regular pay rate unless compensatory time is taken within the same pay period in which the overtime is worked. The Education Code requires the governing board of each district to determine the extent to which, and establish the method by which, ordered overtime is compensated. The board must provide for such compensation or compensatory time off at a rate at least equal to time and one-half the regular rate of pay of the employee designated and authorized to perform the overtime. [EC §§ 45128, 88027]

Compensatory time off authorized in lieu of cash compensation shall be granted within 12 months following the month in which the overtime was worked if the overtime was worked as allowed by the Education Code and not subject to the provisions of the FLSA. [EC §§ 45129, 88028]

Training and Development Program

The district should establish a human resources training and development program for employees. No matter how small the number of employees, offering training is essential. In a small school district, where on-the-job training may be the only method available, districts should consider implementing a three-step training program. Under this system, an employee teaches a job to the employee a step below. The same employee understudies the person who holds the position one step above. In so doing, each job will be covered when any of the three employees is absent from work.

A program of workshops using district employees or independent consultants as instructors is another practical method for training and developing classified personnel. Cooperative efforts among districts for job-alike training often make workshops more cost-effective for participants and may provide access to a larger source of potential instructors or panel members.

Evaluations

A regular schedule of evaluations should be maintained as part of a performance management plan in accordance with the collective bargaining agreement(s) or district/personnel commission rules and regulations. Evaluations are normally made at least twice during the probationary period. It is customary to recommend reemployment or dismissal based on the second rating. Thereafter, an annual appraisal will suffice to inform the employee how job performance is rated. Some districts require a satisfactory rating before granting annual increases.

Separations

Resignations

The governing board may accept the resignation of any employee and may fix the time when the resignation shall take effect, which shall not be later than the close of the school or college year during which the resignation is received by the board. An employee and the governing board of a school district may agree that a resignation will be accepted at a mutually agreed upon date not later than two years beyond the close of the school year during which the resignation is received by the board. [EC §§ 45201, 88201]

Retirement

A classified employee is eligible to retire at age 50 if credited with five years of state service in the Public Employees Retirement system. No minimum or maximum age

limits may be established for employment or continued employment of classified employees who are otherwise qualified. [EC §§ 45134, 88033; GC § 21060] (See also Retirement.)

Layoff

Whenever the number of classified employees must be reduced, the district superintendent should recommend the specific positions to be eliminated. The reduction may only be due to lack of work or lack of funds. The Education Code defines notification periods for employees subject to layoff due to expiration of a specially funded program or due to a bona fide reduction or elimination of service. Employees should be laid off in reverse order of seniority within the classifications of eliminated positions. The impact and effects of the decision to lay off employees is a subject of collective bargaining. [EC §§ 45114, 45117, 45298, 45308, 88014, 88017]

Suspension, Demotion, and Dismissal

The continued employment of permanent classified employees is contingent upon satisfactory performance and personal fitness. A permanent employee may be demoted, suspended, or dismissed for cause. Sufficient cause shall include but shall not be limited to the following: [EC §§ 45113, 80013]

1. Incompetence, inefficiency, inattention to or dereliction of duty, lack of ability, or failure to perform the assigned duties in a satisfactory manner.
2. Insubordination, failure to obey reasonable directions or observe reasonable rules of school district superiors, or willful and persistent violation of the provisions of the Education Code.
3. Conviction of any felony, conviction of a misdemeanor involving moral turpitude, dishonesty, immoral conduct, drunkenness on duty, intemperance, addiction to or use of narcotics, or fraud in obtaining employment with the school district.
4. Knowing membership in Communist Party; advocacy of overthrow of government. [EC § 45303; GC § 1028]
5. Persistent discourteous treatment of the public or of fellow employees.
6. Physical or mental incapacity.
7. Absence from duty without leave.

A permanent classified employee may be suspended, demoted, or dismissed by the governing board upon the recommendation of the district superintendent. The district superintendent, when recommending such action, shall file with the governing board written charges in support of the recommendation. If the governing board approves the recommendation, the employee shall be notified of the decision in writing within three calendar days.

The notification of intended disciplinary action shall be sent via certified mail to the last address of official record with the district. Written notification to the employee shall contain the following:

1. A statement of the specific charges against the employee.
2. The intended effective date of disciplinary action.
3. A statement that the employee has an opportunity to respond before the effective date of the intended disciplinary action and a right to a hearing on such charges.
4. A time within which such hearing may be requested by the employee and the person to contact to request such hearing. The hearing shall not be less than five days after service of the notice to the employee.
5. A card or paper, the employee's signing and filing of which constitute a demand for a hearing and a denial of all charges.

The governing board shall hold a hearing within ten calendar days after the receipt of a demand for a hearing. The demand must come from a permanent employee who has been suspended, demoted, or dismissed. The hearing shall be at a time and place designated by the board. The employee and the governing board shall be afforded equal opportunity to present evidence. At the close of the hearing, the governing board shall render its decision, which shall be final.

An alternate hearing procedure may be established by the governing board. Under this procedure, a Classified Service Board of Appeals is appointed to conduct hearings requested by classified employees who have been suspended, demoted, or dismissed. The board consists of three members appointed for a term of three years. In the event of a vacancy on the board, a replacement is appointed for the remainder of the unexpired term. Members of the Board of Appeals must have been residents of the school district for three years and may not be employees of the school district at any time during their terms of office.

Hearings by a Classified Service Board of Appeals must begin within ten calendar days after the school district has received a demand for a hearing by an employee. The Board of Appeals establishes the time and place of the hearing. The employee and the governing board can be represented by person(s) of their choosing. At the close of the hearing, the Board of Appeals makes a recommendation to the governing board. The recommendation may sustain, reject, or modify the original action. The governing board then makes final disposition of the case.

Implementation of suspension, demotion, and dismissal and appeals shall be in accordance with personnel commission rules and regulations for districts that have adopted the merit system.

Leaves of Absence

Illness or Injury

Every regular employee employed five days a week for a fiscal year of service shall be entitled to 12 days leave of absence with full pay for illness or injury and such additional days as the governing board will allow. An employee who is employed for less than a full school year or fewer than five days per week is entitled to that proportion of 12 days. [EC §§ 45191, 88191]

Leave is prorated based on the number of months and/or days the employee's work assignment bears to the full school year of service. The governing board may grant additional days in proportion to leave granted for a full school-year employment. Pay for such absences shall be the same as if the employee had served during the absence period. Credit for sick leave need not be accrued prior to taking such leave. New employees may not take more than six days until they have completed six months of active service. Unused sick leave may be accumulated from year to year.

Any classified employee shall have the total amount of earned leave of absence for illness or injury transferred from one school district, community college district, or county superintendent of schools to another under the following conditions: [EC §§ 45202, 88202]

1. The employee must have been employed for one calendar year or more.
2. Employment must have been terminated for reasons other than for cause, except under specified conditions.

3. The employee must subsequently accept employment with another school or community college district or county superintendent of schools within one year of termination of such former employment.

Employees should fill out an absence report upon returning to duty following an absence. The governing board of each school district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury. [EC §§ 45191, 88191] The usual practice is that an employee must verify illness by providing a physician's written statement when the absence exceeds a certain number of days. Suggested methods for an employee to verify absence for illness or injury are:

1. The employee presents a statement from a physician certifying illness.
2. The employee's principal, supervisor, or department head certifies the illness.
3. The employee files a personal statement describing the nature of the illness or injury. This statement may be subject to the approval of the district superintendent.

Personal Necessity

Earned days for illness or injury absences may be used by an employee for personal necessity. Such use is limited to seven days in any school or community college year unless additional days are specified in the collective bargaining agreement.

Personal necessity leave may be taken for the following: [EC §§ 45207, 88207]

1. Death of an immediate family member, when leave in addition to bereavement leave is required.
2. Illness or accident involving an employee's person or property or the person or property of an employee's immediate family.
3. Appearance in any court or before any administrative tribunal as a litigant, party, or witness under subpoena or any order made with jurisdiction.
4. Any other reasons which may be prescribed by the governing board.

The governing board shall adopt regulations requiring and prescribing the manner of proof of personal necessity.

Vacation

Classified personnel shall be granted annual vacation at the regular rate of pay. Part-time employees shall be granted vacation time in proportion to the percentage of full-time service rendered. [EC §§ 45190, 45197, 88190, 88197]

Accrued annual vacation leave should not exceed a reasonable number of working days and should not be accumulated from year to year, unless prior approval is on record. Every employee should be encouraged to take at least one vacation during each 18-month period.

Additional vacation credit may be granted regular classified employees because of continuous employment in the district.

Bereavement

Bereavement leave shall be granted to every regular classified employee in the event of the death of an immediate family member, which means a mother, father, grandmother, grandfather, or a grandchild of the employee or of his/her spouse, and the spouse, son, daughter, son-in-law, daughter-in-law, brother, or sister of the employee, or any relative living in the employee's immediate household. Leave is granted for three days. Five days of leave is allowed if out-of-state travel is required. Other relatives may be designated by the governing board as members of the immediate family. [EC §§ 45194, 88184]

Child's School or Day Care Activities

Under specified conditions, employees who are parents, guardians, or grandparents with custody of one or more children in kindergarten, grades 1 to 12, or attending a licensed child day care facility may use vacation, personal leave, compensatory time off, or leave without pay to participate in a child's school or day care activities. [LC § 230.8]

Family Care

Earned, accrued sick leave may be used by an employee to attend to an illness of his or her child, parent, spouse, or domestic partner. The amount of leave per calendar year required under this provision is not less than the amount of sick leave that would be accrued during six months at the employee's then current rate of entitlement. [LC § 233]

Districts with personal necessity leave provisions permitting the use of personal necessity leave for the care of members of an employee's immediate family may wish to incorporate these provisions while taking care to assure that, at a minimum, employees have access to the required amount of leave for the specific purpose(s) described within the Labor Code. In some cases, this means that employees may be entitled to more than the standard amount of personal necessity leave contained within the district's existing personal necessity leave provisions.

Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA) applies to the following employers: [29 USC § 2601 et seq.]

1. Employers who employ 50 or more employees for each working day during each of the 20 or more calendar work weeks in the current or preceding calendar year.
2. Public agencies regardless of the number of employees.
3. Public and private elementary and secondary schools, without regard to the number of employees.

Under FMLA, covered employers are required to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for an employer for at least one year, and for 1,250 hours of service over the previous 12 months, and if there are at least 50 employees within 75 miles of the worksite.

Qualifying conditions for FMLA leave were expanded to include provisions related to employees in military families with the passage of the National Defense Authorization Act for Fiscal Year 2008 (NDAA). Unpaid leave must be granted for any of the following reasons:

1. Birth of the employee's child and in order to care for the newborn child.
2. Placement of a child with the employee for adoption or foster care.
3. Care for the employee's immediate family member (spouse, child, or parent) with a serious health problem.
4. Inability of the employee to perform functions of his/her job because of a serious health condition.

5. Any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty, or has been called to active duty, in the Armed Forces in support of a contingency operation.

The NDAA amendment also added a “Servicemember Family Leave” provision to the FMLA effective January 2008. Under the new provision, an eligible employee who is the spouse, child, parent, or next of kin (nearest blood relative) of a covered servicemember can take up to 26 weeks of job-protected leave in a single 12-month period to care for the service member. A covered servicemember must have a serious illness or injury, as defined. Servicemember family leave is combined with all other FMLA leaves to provide for a combined total of 26 weeks of leave during a 12-month period.

Proposed regulations implementing the 2008 amendments to the FMLA have not yet been adopted by the Department of Labor (see Additional Resources). It is recommended that districts notify employees of the new leave options, revise policies and forms to reflect the changes, and proceed with caution, consulting legal counsel as necessary, when addressing requests for military-related FMLA leave.

Special rules apply to employees of local educational agencies, including public school districts, under the FMLA. Eligible employees who take unpaid leave for the reasons specified above must be restored to the same or equivalent position held when the leave commenced. Exemptions to this requirement apply to certain highly compensated employees.

Under California law, an employer that provides paid sick leave for employees shall permit an employee to use in any calendar year accrued sick leave, in an amount not less than the amount earned during six months' employment, to attend to the illness of a child, parent, spouse or domestic partner of the employee. This does not extend the maximum period of leave to which an employee is entitled under FMLA, regardless of whether the employee receives sick leave compensation during that leave.

No California employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to exercise the right to use sick leave to attend to an illness of a child, parent, spouse, or domestic partner of the employee.
[LC § 233]

Industrial Accident and Illness

The governing board of each district must make provisions by regulation for industrial accident or illness leaves of absence for employees in the classified service. A governing board may provide for additional leave beyond required provisions, if deemed appropriate. Regulations governing industrial accident and illness leave shall include the following provisions: [EC §§ 45192, 88192]

1. Allowable leave shall be for not less than 60 working days in any one fiscal year for the same accident. If the 60 days overlap into the next fiscal year, the employee shall be entitled to only those days left at the end of the fiscal year in which the accident or illness occurred.
2. Allowable leave shall not accumulate from year to year.
3. Leave will begin on the first day of the absence.
4. Payment for wages lost on any day shall not exceed the wages or salary to which the employee would normally be entitled if those wages were added to the temporary disability benefits.
5. During all paid leaves of absence due to industrial accident or illness, as well as sickness, vacation, or other paid leave, the employee shall endorse to the district wage loss benefit checks received under the State Workers' Compensation laws. The district then issues the employee appropriate warrants for full payment of salary. The district shall make retirement and other authorized payroll deductions.
6. If the employee is not medically able to resume normal job duties at the expiration of all available paid leaves of absence, the employee shall be notified in writing that available paid leave has been exhausted and shall be offered an opportunity to request additional leave. At the expiration of all available leave, the employee shall be placed on a reemployment list for 39 months. If medically recovered and available during the 39-month period, the person shall be hired to any vacant position in the previous classification over all other candidates except for those on a reemployment list established according to seniority.
7. Any classified employee absent due to industrial accident or illness for five months or less shall receive not less than the difference between the employee's salary and that of the substitute employed to fill the position. This provision shall

not apply to a school district adopting a rule providing not less than 100 working days of paid sick leave at not less than 50 percent of the employee's regular salary.

8. As a condition of eligibility for industrial accident or illness leave, the governing board may require that an employee have served with the district continuously for a specified period of time not to exceed three years.
9. Any employee receiving benefits for an industrial accident or illness shall remain within California unless the governing board authorizes travel outside of the state.

In a school district that has adopted only the statutory minimums, the employer shall use:

1. Industrial accident and illness leave.
2. Holidays, vacations, compensatory time, and other available paid leave.
3. Current 12 days full pay sick leave.
4. Accumulated full-pay sick leave.
5. Partial-pay sick leave (employee's salary less substitute's salary). [53 Ops. Cal.Atty.Gen. III, 1970]

Jury Duty

The governing board shall grant a leave of absence to a classified employee called for jury duty. Leave shall be granted with pay up to the amount of the difference between the employee's regular earnings and any amount received as juror's fees. Employees may receive reimbursement for mileage in accordance with law. [CCP § 215(c); EC §§ 44037, 87036]

A school district governing board may provide by rule that only a percentage of its staff shall be granted leave for jury duty at one time. The percentage shall not be less than two percent. [EC § 44037]

Employees of a public entity who receive regular compensation and benefits while performing jury service in all California trial courts may not be paid a juror's fee. School districts are defined as public entities under Code of Civil Procedures section

481.200. Districts should review their bargaining unit contracts to determine whether salary and benefits are provided to employees while performing jury service. [CCP § 215(b)]

When employees are entitled to receive juror's fees, districts may want to develop a form on which the clerk of the court can indicate the juror's fee and attest to the time served. The district may elect to accept the jury warrant and abate the payment to the same expenditure classification as the employee's salary. In this case, the employee may be paid in full. If mileage expense is included in the warrant, the employee should retain the warrant, and the district should deduct from the employee's salary only the amount paid for the juror's fee.

Military Service

Both state law and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) provide protection from discrimination for employees who leave their jobs to serve in the military (see Additional Resources). [38 USC §§ 4301-34; 20 CFR Part 1002; M&VC § 389 et seq.]

An employee who enlists, is inducted, or is recalled to active duty will be granted a leave of absence for the period of enlistment or required service under specified conditions. A classified employee who has been employed a minimum of one year with a district will be granted a temporary military leave of absence without loss of salary for the first 30 days of such absence, upon submission of military orders to report for active duty training or like activity, provided the period of ordered duty does not exceed 180 calendar days. [EC § 45059; M&VC §§ 395.01-5.02]

Upon completion of active military service during a period of national emergency or war, the employee shall be reinstated in the position held at the time of enlistment or induction. This applies when the employee returns within six months of the date of discharge. The period of absence shall not be construed to be a break in service. [EC §§ 45297, 88116; M&VC § 395.2]

The general requirements for eligibility for reinstatement to work are as follows:

1. If the period of active duty has been less than 31 days, notice of intent to return must be given on the first full calendar day following completion of the period of service and return to work must be no later than the beginning of the first month following release from active duty.

2. If the period of active duty has been more than 30 days but less than 181 days, notice of intent to return must be given no less than 14 days after completion of the service.
3. If an employee is hospitalized, convalescing, or recovering from illness or injury incurred during active duty, he/she must report at the end of the required recovery period up to two years.

Pregnancy and Childbirth

Regulations implementing Title IX of the Education Amendments of 1972, particularly subpart E concerning discrimination on the basis of sex in employment in education programs and activities, and California's Fair Employment and Housing Act (FEHA) require that pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom be treated as any temporary disability for all job-related purposes including: [20 USC § 1681 et seq.; EC §§ 45193, 88193; GC § 12943]

1. Commencement, duration and extension of leave. Leaves must be made available for up to four months per pregnancy for the period(s) of actual disability caused by a woman's pregnancy, childbirth, or related medical conditions.
2. Payment of disability income.
3. Accrual of seniority and other benefits or services.
4. Reinstatement to the same or similar position.
5. Transfer to another position if it is medically advisable and the employer can reasonably accommodate the employee. Additionally, the employer can transfer an employee to an alternative position if it is medically advisable for an employee to take intermittent leave or work a reduced schedule.

The length of a leave of absence due to pregnancy-related disabilities shall be determined by the employee and the employee's physician. Pregnant employees who continue to work must be allowed to utilize paid sick leave days while they are physically unable to work, subject to medical verification as required by the school district. An employee who voluntarily requests and is granted an unpaid maternity leave does not have the right to utilize paid sick leave during the period she is in such an unpaid status if the district does not allow use of sick leave during any other type of unpaid leave.

Retraining and Study

A classified employee may be granted a leave of absence not to exceed one year for the purpose of undertaking study or for retraining to meet changing conditions within the district. [EC §§ 45380-7, 88220-7]

An employee applying for a leave of absence for study purposes must have rendered at least seven consecutive years of service to the district. An employee applying for retraining leave must have rendered service to the district for at least three consecutive years. Such leaves of absence shall not be deemed to be a break in service.

The amount of compensation and services required of the employee on leave will be determined by mutual agreement between the governing board and employee. If the employee is to be compensated as if the person were working for the district, a suitable good-faith bond is required. This may be waived by official action of the governing board.

A school or community college district governing board may grant reimbursement of the costs, including tuition fees, for a permanent classified employee who satisfactorily completes approved training. This training must be intended to improve job knowledge, ability, or skills.

Voting Leave

Employees who do not have sufficient time outside of working hours to vote at a statewide election must be granted up to two hours of paid leave for this purpose. The leave must be granted to employees who would not otherwise be able to vote because of their work schedules on election day. The time must be at the beginning or end of the work day, unless otherwise agreed to between the employer and employee. Employees must notify the employer at least two working days in advance of the election of their need for time off to vote. At least ten days before every statewide election, employers must post a notice in a conspicuous place informing employees of the availability of voting leave. [EIC §§ 14000-1]

Additional Leaves of Absence

The governing board has the authority to grant paid or unpaid leaves of absence for other purposes and periods of time not expressly authorized or required by the Education Code as long as it does not deprive any employee of a leave of absence

that he or she is entitled to take by law. Additional leaves for accident or illness or quarantine may be granted and compensated at such rate as the board prescribes. [EC §§ 45198-9, 88198-9]

A permanent classified employee who has exhausted entitlement to sick leave, vacation, compensatory time off, or other available paid leave shall be notified in writing of the exhaustion of all available paid leave and shall be offered an opportunity to request additional leave. The governing board may grant additional paid or unpaid leave not to exceed six months. This leave of absence may be renewed by the governing board for two additional periods of up to six months each, not to exceed a maximum of 18 months. [EC §§ 45195, 88195]

When the employee is able to assume the duties of a position within the assigned class, the employee shall be restored to a position within the class with all rights, benefits, and burdens of a permanent employee.

Prorated Benefits

Regularly employed part-time classified employees shall be entitled to sick leave, vacation, pregnancy, parental, and all other leaves and benefits granted by the governing board to regular full-time employees. These leaves and benefits shall be prorated according to the number of hours worked. [EC §§ 45136-7, 88035-6]

Holidays

All probationary or permanent classified employees shall be entitled to the following paid holidays. The holidays must fall during the normal workweek of the employee. The employees must be in paid status during any portion of the working day immediately preceding or succeeding the holiday. [EC §§ 45203, 79020, 88203]

January 1

Third Monday in January - Martin Luther King, Jr. Day

February 12 - Lincoln Day

Third Monday in February - Washington Day

Last Monday in May - Memorial Day

July 4

First Monday in September - Labor Day

November 11 - Veterans Day

Last Thursday in November - Thanksgiving Day

December 25

If the governing board does not designate September 9, which is Admission Day, as a paid holiday for classified employees, the district shall provide a substitute holiday as specified. March 31, which is "Cesar Chavez Day," and the fourth Friday in September, known as "Native American Day," may be paid holidays under the classified collective bargaining agreement. [EC §§ 45203, 45206.5, 88203, 88205.5]

In addition to the above, all classified employees shall be entitled to holidays declared by the President, Governor, or governing board. When a holiday falls on a Saturday, the preceding Friday shall be the holiday. If the regular workweek includes Saturday or Sunday, the preceding Friday or following Monday is the holiday.

When an employee is required to work on a holiday, compensation or compensatory time off at the rate of time and one-half shall be given in addition to the regular pay received for the holiday. [EC §§ 45205, 88205]

Other Programs and Practices

Grievances and Appeals

An employee should at all times have the freedom to refer grievances, complaints, and disputes to a person higher in authority than the immediate supervisor.

Incentive Programs

Governing boards may adopt a program of making monetary awards to employees who do any of the following: [EC § 44015]

1. Propose procedures or ideas that result in reducing expenditures or improving operations.
2. Perform special acts or services in the public interest.
3. Make exceptional contributions to the operations of the district by their superior accomplishments.

An effective incentive for employees is a policy of supporting promotions from within the district. Employees new to the profession are likely to be enthusiastic about working in an organization that offers opportunities for advancement. As the employee grows in knowledge, skill, and abilities, promotability is an incentive to remain with the organization.

Many employers offer employees incentives for completing continuing education courses.

Temporary Office Services

As a result of court decisions, non-merit system school districts may use the services of individuals who are not classified employees by subcontracting out for temporary-help services under the permissive authority of Education Code section 35160. This may require negotiating with the exclusive representative if the purpose is to save labor costs.

Governing boards of non-merit system districts may contract with temporary-help employment agencies to fill management and confidential positions not subject to collective bargaining. Contracts cannot exceed 60 working days per position per leave and cannot exceed two per year. [EC § 45140]

Education Code section 45256 specifically prohibits merit system districts from subcontracting out for temporary services outside the classified service unless a specific statute exists (e.g., districts may contract for security services under Education Code section 38005 or special services under Government Code section 53060). In order for a district to contract with an agency for providing short-term personnel services under Government Code section 53060, it must demonstrate that it does not have employees who can perform the services or cannot employ persons for that purpose by following required employment procedures; that the services are “special;” and that the persons performing the services are “specially trained, experienced and competent” to perform the special services.

A district may contract for personal services currently or customarily performed by classified employees under specified conditions to achieve cost savings. [EC § 45103.1] (See also Commercial School Orders.)

Vehicle Operation

The school district should periodically verify that California driver's licenses for the appropriate class of vehicle are kept current by schoolbus drivers, truck drivers, and any other employees who occasionally drive a district vehicle as part of the work assignment. Employees who drive schoolbuses shall also have an “S” (School bus) endorsement on their commercial driver's licenses. The Department of the California Highway Patrol can assist in the development of a safe driving program for district vehicle operators. Additional information about bus driver training can be found on the California Department of Education Web site (see Additional Resources). (See also Transportation.)

CERTIFICATED PERSONNEL

This section deals with certificated personnel procedures for school districts. As part of reforms enacted in 1988, the Legislature eliminated credentials for faculty employed in academic positions of community college districts. "Certificated employee" as used in this section includes "faculty member" or "faculty" of a community college district, where appropriate.

A certificated person refers to a person who holds one or more documents, such as a certificate, a credential, or a life diploma that singly or in combination, license the holder to engage in the school service designated in the document(s). Governing boards of school districts shall employ for positions requiring certification qualifications only persons who possess the prescribed qualifications and demonstrate proficiency in basic reading, writing, and mathematics. [EC §§ 44006, 44830 et seq.] Districts should review hiring criteria and recruitment processes to ensure that every effort is made to find and hire fully qualified teachers.

The California Commission on Teacher Credentialing (CTC) Web site provides helpful information and resources (see Additional Resources).

The No Child Left Behind Act (NCLB) imposes significant requirements on the employment and hiring of certificated personnel. All teachers of core academic subjects in Title I programs must meet the definition of "highly qualified" as determined by the State Board of Education and approved by the U.S. Department of Education. In California, a "highly qualified" teacher is one who has a bachelor's degree, has a state credential or Intern Certificate/Credential for no more than three years, and has demonstrated core academic subject matter competence in accordance with applicable requirements for elementary or middle/high school teachers. [20 USC §§ 6319, 7801; 34 CFR §§ 200.55-0.57; 5 CCR §§ 6100-25]

More information on the No Child Left Behind Act is available online (see Additional Resources).

Laws enacted as a result of the Williams Settlement [Williams v. State of California, Super. Ct., San Francisco, No. CGC-00-312236] impact the hiring practices of all school districts in California. Implementing legislation requires county offices of education to review, monitor and report on teacher training, certification, assignment, hiring, and retention practices of school districts. The increased monitoring of teacher requirements will ensure that teachers with 20 percent or more of English Learners will have appropriate CLAD, BCLAD or ELD/SDAIE authorization or training. [EC §§ 44225.6, 44258.9]

Additional information on Williams Settlement requirements is available online (see Additional Resources).

Governing boards of community college districts shall employ for academic positions only persons who possess qualifications prescribed by regulation of the board of governors. Community college districts should refer to comparable sections in the Education Code. [EC §§ 44006, 44830 et seq., 87003, 87400 et seq.]

Application

When a certificated position becomes available, it should be the policy of the governing board to advertise widely in order to attract the most qualified applicants. Qualified applicants should be employed without regard to race, sex, religious creed, color, national origin, ethnicity, ancestry, physical disability, mental disability, temporary disability (including pregnancy), medical condition, sexual orientation, gender, or any other characteristic that is contained in the definition of hate crimes in Penal Code section 422.55. Applicants shall not be denied consideration for employment for reasons of age or marital status. [EC §§ 220, 260; GC § 12940 et seq.; 5 CCR 4910]

Appointment

The governing board, upon recommendation of the district superintendent, shall appoint each employee. Each is subject to the laws of the State of California, the policies of the governing board, and the procedures established by the district superintendent.

Before an appointment may become final, the following information and documents are required from each new employee:

1. Certificate(s), credential(s), or life diploma - Document must be registered with the county office of education. [EC §§ 44330, 44830-0.2]
2. Fingerprints - Fingerprints are submitted to the Department of Justice, where a criminal background check is conducted. [EC §§ 44332.6, 44830.1]
3. Pre-employment Physical Examination - The governing board may require an employee to have a medical examination to determine whether the employee is able to undertake full duties. A medical examination may also be required to determine whether there is a condition that would endanger the health of pupils. The school district may pay for such an examination. [EC §§ 44839, 87408; GC § 12940]

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4. Examination for Tuberculosis - No person shall be initially employed by a school district unless the person has submitted to an examination by a California-licensed physician within the past 60 days to determine that he or she is free of active tuberculosis. [EC §§ 49406, 87408, 87408.6]
 5. Form W-4 - An employee must complete an Employee's Withholding Exemption Certificate (W-4). A Social Security number is required as an identification number for income taxes, state retirement, and payroll processing purposes. (See also Retirement.)

Form W-4 or Form DE34, Report of New Employee(s) shall be filed with the California Employment Development Department within 20 days of employee's "start to work" date. [UIC § 1088.5]

6. Form I-9 (Revised 6/5/07) - The federal Immigration Reform and Control Act of 1986 (IRCA) requires employers to verify the Immigration status of all new employees. [P.L. 99-603]
7. Constitutional Oath - New employees, except aliens legally employed, must take an oath indicating intent to support and defend the Constitutions of the United States and the State of California. [GC §§ 3101-5]
8. Child Abuse Acknowledgement - All employees who are child care custodians or health practitioners, as defined by Penal Code section 11166.5, are required to report known or suspected instances of child abuse. Persons assigned to such positions shall sign a Child Abuse Acknowledgement form indicating their understanding of this responsibility.
9. Drug-Free Workplace Acknowledgement - Districts are required to adopt a policy establishing a drug-free workplace and to notify employees of the provisions of this policy. [41 USC §§ 701-7; GC §§ 8350-7] Use of an acknowledgement form certifies that an employee has been informed of his or her obligations under governing board policy and state and federal law.
10. Retirement Data - Certificated employees are covered under the California State Teachers' Retirement System (CalSTRS) Defined Benefit or Cash Balance plan. Employees who have previously been employed in any capacity by a school district or public agency in California are required to file a Verification of Membership Status in a California Public Retirement System. (See also Retirement.)

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11. Notice of Workers' Compensation Benefits - Districts are required to provide employees information about workers' compensation benefits at the time of hire. Most insurance carriers provide a brochure for this purpose or one can be obtained from the state Division of Workers' Compensation. Employees may be asked to complete an acknowledgement of receipt of this information. [LC §§ 3550-1]
 12. Certification of Required Vehicle Insurance and California Driver's License - Employees who may use district-owned vehicles or their private vehicles on school district business are required to have a valid California driver's license for the type of vehicle to be operated. Employees who use personal vehicles for district business must meet insurance responsibility requirements. The governing board may establish levels of insurance coverage that exceed state minimum requirements. [VC § 16451]

Classification

The governing board shall classify all certificated employees as probationary, permanent, substitute, or temporary.

Probationary

All certificated employees not classified as permanent shall be classified as probationary, substitute, or temporary. A substitute or temporary employee who teaches for at least 75 percent of the days schools are maintained shall be deemed to have served as a probationary employee if reemployed for the following school year in a position requiring certification qualifications. [EC §§ 44915, 44919, 87477]

Permanent

A certificated employee shall be classified as permanent upon commencement of the next succeeding school year after serving two complete consecutive school years in a school district having an average daily attendance of 250 or more. [EC § 44929.21]

A certificated employee may be classified as permanent in a school district having an average daily attendance of less than 250 after having been employed for three complete consecutive school years. If the classification is not made, the employee may be reelected from year to year without becoming a permanent employee. [EC § 44929.23]

A certificated person employed in an administrative or supervisory position shall be classified as a permanent classroom teacher after completing a probationary period if the average daily attendance of the school district is 250 or more. If the average daily attendance is less than 250, the employee may also be classified as permanent. [EC § 44897]

A person employed in a community college administrative position shall become a first-year probationary faculty member once the administrative assignment ends, if specific conditions apply. [EC § 87458]

Substitute

A certificated person filling the position of a regular employee who is absent from service shall be classified as a substitute under specified conditions. [EC §§ 44917]

Temporary

Under specified conditions, a certificated employee serving on a day-to-day basis during the first three school months of any school term to teach temporary classes or perform other duties, or for not more than four school months to teach in special day and evening classes for adults or in schools of migrant population, shall be classified as a temporary employee. In an actual emergency when persons are not available for probationary classification, a person may be appointed to a position on a temporary basis for a period not to exceed 20 working days. [EC §§ 44909, 44917, 44919-21, 87478-81]

A school district must specifically classify temporary employees as such and must provide them with a written statement clearly indicating the temporary nature of the employment and the length of time for which the person is being employed prior to the first day of service. If a written statement does not indicate the temporary nature of the employment, the employee will be deemed to be probationary. Unless a district is certain it needs or wants the temporary employee for the full year, it should hire the temporary for a shorter period and then extend the contract or issue a new one. [EC § 44916]

Subject to specified conditions, community colleges may employ a qualified individual as a temporary faculty member based on the need arising from the leave granted to or long-term illness experienced by a certificated employee or the need for additional certificated employees because of higher enrollment. [EC § 87482]

Changes in Classification and Salary

The governing board may create, abolish, or combine certificated positions.

The governing board may increase the annual salaries of certificated employees during the school year. [EC §§ 45032, 87806]

The governing board shall not decrease the annual salary of a certificated employee for failure to meet any district requirement to complete additional education units, courses of study, or equivalent. [EC §§ 45033, 87807]

When a salary increase is due for the completion of additional units, course of study, or equivalent, the district shall pay the salary increase not later than three regular pay periods or three months, whichever is longer, after the employee files proper documentation, where required, for the increase. [EC § 45048-9]

Assignment

The district superintendent shall assign all employees subject to approval of the government board. Assignments should be made on the basis of the employee's qualifications and the needs and best interests of the district. [EC § 35035]

Unless a written notice of release is received by March 15, or March 1 for persons serving as principals, the contract for certain administrative and supervisory positions shall be renewed on the same basis as the previous contracts. [EC § 44951]

Compensation

Salary Schedule and Payments

Each school district must adopt a salary schedule, which shall be printed and made available to each certificated employee. [EC §§ 45023 et seq., 44977(c), 87802]

Salary schedules vary in kind and in the information presented. School district salary schedules should specify at least the following:

1. Length of contract.

2. Initial placement on schedule.
 - a. Credit for outside teaching experience.
 - b. Maximum placement on schedule.
3. Advancement on schedule.
 - a. Experience requirements.
 - b. Professional growth requirements.
4. Definition of classes: degrees, requirements, credentials, and semester hours.
5. Definition of steps, usually in terms of years.
6. Compensation for work beyond the instructional day.
7. Rate for substitute teachers.
8. Rate for hourly certificated employees.
9. Rate for summer school or intersessions.

Any certificated person who serves less than a full school year in a position requiring certification qualifications shall be compensated on the basis of actual working days served. The person shall receive not less than one-half of the established annual salary if services cover a complete semester. [EC §§ 45041, 87815-8]

Any certificated person employed at the beginning of the second semester shall be paid not less than one-half of the annual compensation for that position. The school calendar shall indicate the beginning of the second semester. [EC §§ 45043, 87818]

A certificated employee who performs teaching or other services in addition to regular classroom teaching duties or performs teaching or other services in summer school shall receive timely payment for the work, either in one lump sum or at an hourly, daily, biweekly, quadri-weekly, or monthly rate. Compensation for such additional duties should not be included in the contract salary. [EC §§ 45049, 87822]

A school district may pay certificated employees in 10, 11 or 12 equal payments instead of by the school month. Under the uniform payroll procedure, the number of months is determined by the month that the certificated employee begins the school year. Payment shall be timely or interest may be due for each day of the delay. [EC §§ 45038, 45048]

Differential Pay Period

A certificated employee who is absent for an extended period of time due to an accident or illness and has exhausted all earned sick leave, including accumulated sick leave, will be entitled to receive differential pay for one five-month period per illness or accident. [EC §§ 44977, 44978.1]

Professional Growth

Planning and conducting an individual program of professional growth should be developed by a district for its certificated employees. In addition to inservice training, the program should include opportunities for advanced training and research outside the district. A release-time policy should be considered to be consistent with the needs of the district as well as individual goals of certificated employees.

Evaluations

A governing board is required to adopt rules and regulations relating to the evaluation of certificated personnel. A continuing program of performance evaluation should be maintained. Periodic written performance evaluations should be used. Evaluators should hold evaluation conferences with the employee and should provide constructive help and encouragement. [EC §§ 35171, 44660 et seq., 87660 et seq.; 5CCR § 53130]

Separations

Resignations

The governing board shall accept the resignation of any certificated employee and shall fix the time when the resignation takes effect, which shall not be later than the end of the school year in which the resignation was submitted. [EC §§ 44930, 87730]

An employee and school district governing board may agree that a resignation be accepted on a date not later than two years beyond the close of the school year in which the resignation is received.

Dismissal of Probationary Employees

Probationary employees shall be dismissed for cause only during the school year. When a probationary employee's services will not be required for the ensuing year, notification shall be given. [EC §§ 44949, 87740]

When the governing board determines that reduction in staff is necessary, probationary employees may be dismissed. This may happen due to declining average daily attendance, discontinuance or reduction of a particular service, or insufficient increase in total revenue limit per average daily attendance. [EC §§ 44955, 44955.5, 87743 et seq.]

Suspension or Dismissal of Permanent Employees

School district governing boards may suspend certificated employees without pay for a specific period of time on grounds of unprofessional conduct. [EC § 44933 et seq.]

Only for cause may permanent employees be dismissed. [EC §§ 44932, 87732]

Reemployment

Probationary teachers employed by the district may be reemployed on or after March 15. Certificated personnel not reelected by the district may be offered employment for the ensuing year any time after December 31. [EC § 44840]

Continuing contracts may be offered to any employee in a position requiring a supervisory or administrative credential and to any certificated employee of a school district of 250 ADA or less. Continuing contracts may cover a period of one year but may not exceed four years. [EC § 44929.20]

Any probationary or permanent employee may be deemed to have declined employment and his or her services as an employee may be terminated on June 30 if the employee has failed, upon request, to notify the governing board of intention to remain in the services of the school or community college district. Under specified circumstances, a probationary or permanent employee who fails to report for duty at the beginning of the ensuing school year may be terminated after the 20th consecutive day of absence. [EC §§ 44842, 87410-1]

Leaves of Absence

Illness or Injury

Every full-time certificated employee shall be entitled to ten days leave of absence for illness or injury. The governing board may authorize additional days of sick leave with full pay for a school year of service. An employee employed for less than full time is entitled to that proportion of the leave of absence as the number of days employed per week bears to five. [EC § 44978]

Credit for sick leave need not be accrued prior to taking leave. Unused sick leave may be accumulated from year to year. No payment will be made for unused sick leave at termination. [EC §§ 44977-8, 87781]

All accumulated sick leave can be transferred by a certificated employee from one school or community college district to another. The employee must have been employed in the school district for one school year or more. The position must have been accepted during the second or any succeeding school year of employment or within the school year succeeding the school year in which employment was terminated. [EC §§ 44979-80, 87782-5; 5 CCR §§ 5601, 53125]

The governing board shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury. [EC §§ 44978, 87781] The usual practice is that an employee must verify illness by providing a physician's written statement when the absence exceeds a certain number of days. Suggested methods for an employee to verify absence for illness or injury as follows:

1. The employee presents a physician's statement certifying illness or injury.
2. The employee's principal, supervisor, or department head certifies the illness or injury.
3. The employee files a personal statement describing the nature of the illness or injury. This statement may be subject to the approval of the district superintendent.

Personal Necessity

Any days of leave of absence for illness or injury may be used by the employee for personal necessity. Such use is limited to seven days per school year unless

additional days are specified in the certificated collective bargaining agreement. Personal necessity leave may not exceed six days in any single year for community college districts.

Personal necessity leave may be taken for the following: [EC §§ 44981, 87781.5, 87784]

1. Death or serious illness of an immediate family member.
2. Accident, involving employee's person or property, or the person or property of an immediate family member.
3. Cases of compelling personal importance and other reasons prescribed by the governing board.

The governing board of each district shall adopt regulations requiring and prescribing the manner of proof of personal necessity.

Vacation

A certificated employee's assignment determines the number of vacation days allowed. Vacations for each employee should be included in the printed salary schedule, which must be adopted by the governing board prior to the beginning of the school year.

Bereavement

Certificated employees are entitled to a leave of absence for bereavement in the event of the death of an immediate family member, which means a mother, father, grandmother, grandfather, or a grandchild of the employee or of his/her spouse, and the spouse, son, daughter, son-in-law, daughter-in-law, brother, or sister of the employee, or any relative living in the employee's immediate household. Leave is granted for three days. Five days of leave is allowed if out-of-state travel is required. Other relatives may be designated by the governing board as members of the immediate family. [EC §§ 44985, 87788]

Child's School or Day Care Activities

Under specified conditions, employees who are parents, guardians, or grandparents with custody of one or more children in kindergarten, grades 1 to 12, or attending a

licensed child day care facility may use vacation, personal leave, compensatory time off, or leave without pay to participate in a child's school or day care activities. [LC § 230.8]

Family Care

Earned, accrued sick leave may be used by an employee to attend to an illness of his or her child, parent, spouse, or domestic partner. The amount of leave per calendar year required under this provision is not less than the amount of sick leave that would be accrued during six months at the employee's then current rate of entitlement. [LC § 233]

Districts with personal necessity leave provisions permitting the use of personal necessity leave for the care of a member of an employee's immediate family may wish to incorporate these provisions while taking care to assure that, at a minimum, employees have access to the required amount of leave for the specific purpose(s) described in the Labor Code. In some cases, this means that employees may be entitled to more than the standard amount of personal necessity leave permitted by the district's existing personal necessity leave provisions.

Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (FMLA) applies to the following employers: [29 USC § 2601 et seq.]

1. Employers who employ 50 or more employees for each working day during each of the 20 or more calendar work weeks in the current or preceding calendar year.
2. Public agencies regardless of the number of employees.
3. Public and private elementary and secondary schools, without regard to the number of employees.

Under FMLA, covered employers are required to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. Employees are eligible if they have worked for an employer for at least one year, and for 1,250 hours of service over the previous 12 months, and if there are at least 50 employees within 75 miles of the worksite.

Qualifying conditions for FMLA leave were expanded to include provisions related to employees in military families with the passage of the National Defense Authorization Act for Fiscal Year 2008 (NDAA). Unpaid leave must be granted for any of the following reasons:

1. Birth of the employee's child and in order to care for the newborn child.
2. Placement of a child with the employee for adoption or foster care.
3. Care for the employee's immediate family member (spouse, child, or parent) with a serious health problem.
4. Inability of the employee to perform functions of his/her job because of a serious health condition.
6. Any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active duty, or has been called to active duty, in the Armed Forces in support of a contingency operation.

The NDAA amendment also added a "Servicemember Family Leave" provision to the FMLA effective January 2008. Under the new provision, an eligible employee who is the spouse, child, parent, or next of kin (nearest blood relative) of a covered servicemember can take up to 26 weeks of job-protected leave in a single 12-month period to care for the service member. A covered servicemember must have a serious illness or injury, as defined. Servicemember family leave is combined with all other FMLA leaves to provide for a combined total of 26 weeks of leave during a 12-month period.

Proposed regulations implementing the 2008 amendments to the FMLA have not yet been adopted by the Department of Labor (see Additional Resources). It is recommended that districts notify employees of the new leave options, revise policies and forms to reflect the changes, and proceed with caution, consulting legal counsel as necessary, when addressing requests for military-related FMLA leave.

Special rules apply to employees of local educational agencies, including public school districts, under the FMLA. Eligible employees who take unpaid leave for the reasons specified above must be restored to the same or equivalent position held when the leave commenced. Exemptions to this requirement apply to certain highly compensated employees.

Under California law, an employer that provides paid sick leave for employees shall permit an employee to use in any calendar year accrued sick leave, in an amount not less than the amount earned during six months' employment, to attend to the illness of a child, parent, spouse, or domestic partner of the employee. This does not extend the maximum period of leave to which an employee is entitled under FMLA, regardless of whether the employee receives sick leave compensation during that leave.

No California employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using or attempting to exercise the right to use sick leave to attend to an illness of a child, parent, spouse, or domestic partner of the employee. [LC § 233]

Industrial Accident and Illness

The governing board of each district must make provisions by regulation for industrial accident or illness leaves of absence for all certificated employees. A governing board may provide for additional leave beyond required provisions, if deemed appropriate. Regulations governing industrial accident and illness leave shall include the following provisions: [EC §§ 44984, 87787]

1. Allowable leave shall be for not less than 60 days in one fiscal year during which the schools of the district are required to be in session or when the employee would have otherwise been performing work for the district.
2. Allowable leave shall not be accumulated from year to year.
3. Leave shall commence on the first day of absence.
4. The employee may endorse to the district temporary disability indemnity checks received. The district, in turn, shall issue the employee appropriate salary warrants and shall deduct normal retirement and other authorized contributions. Any disability indemnity actually paid to and retained by the employee for periods covered by any salary warrant shall be deducted from the payment.
5. Leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.
6. When leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused sick leave due for the same illness or injury.

7. Upon termination of the leave, the employee shall be entitled to leave of absence for illness or injury. Such leave shall be deemed to have begun on the date of termination of the industrial accident or illness leave, provided that if the employee continues to receive temporary disability indemnity, the person may elect to take as much of the accumulated sick leave which, when added to the temporary disability indemnity pay, will result in payment to the employee of not more than full salary. [EC §§ 44977-84, 87780-7]
8. As a condition of eligibility for industrial accident or illness leave, the governing board may require that an employee have served with the district continuously for a specified period of time not exceed to three years.
9. Any employee receiving benefits for an industrial accident or illness shall remain within California unless the governing board authorizes travel outside of the state.

Jury Duty and Court Appearance

Certificated employees may be granted leaves of absence when called for jury duty or required to appear in court for reasons not brought about through their connivance or misconduct. An employee granted such leave may be paid in an amount that equals regular earnings when added to jury or witness fees received. When serving as jurors, employees may receive reimbursement for mileage in accordance with law. [CCP § 215(c); EC §§ 44036, 87035]

Employees of a public entity who receive regular compensation and benefits while performing jury service in all California trial courts may not be paid a juror's fee. School districts are defined as public entities under Code of Civil Procedures section 481.200. Districts should review their bargaining unit contracts to determine whether salary and benefits are provided to employees while performing jury service. [CCP § 215(b)]

When employees are entitled to receive juror's fees, districts may want to develop a form on which the clerk of the court can indicate the juror's fee and attest to the time served. The district may elect to accept the jury warrant and abate the payment to the same expenditure classification as the employee's salary. In this case, the employee may be paid in full. If mileage expense is included in the warrant, the employee should retain the warrant, and the district should deduct from the employee's salary only the amount paid for the juror's fee.

Military Service

Both state law and the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) provide protection from discrimination for employees who leave their jobs to serve in the military (see Additional Resources). [38 USC §§ 4301-34; 20 CFR Part 1002; M&VC § 389 et seq.]

An employee who enlists, is inducted, or is recalled to active duty will be granted a leave of absence for the period of enlistment or required service under specified conditions. A certificated employee who has been employed a minimum of one year with a district will be granted a temporary military leave of absence without loss of a salary for the first 30 days of such absence upon submission of military orders to report to active duty training or like activity, provided the period of ordered duty does not exceed 180 calendar days. [EC § 45059; M&VC §§ 395.01-5.02]

Upon completion of active military service during a period of national emergency or war, the employee shall be reinstated in the position that the employee held at the time of enlistment or induction. This applies where the where the employee returns within six months of termination of that service or within one year from the date of a treaty of peace. The period of absence shall not be construed to be a break in service. [M&VC § 395.2]

The general requirements for eligibility for reinstatement to work are as follows:

1. If the period of active duty has been less than 31 days, notice of intent to return must be given on the first full calendar day following completion of the period of service and return to work must be no later than the beginning of the first month following release from active duty.
2. If the period of active duty has been more than 30 days but less than 181 days, notice of intent to return must be given no less than 14 days after completion of the service.
3. If an employee is hospitalized, convalescing, or recovering from illness or injury incurred during active duty, he/she must report at the end of the required recovery period up to two years.

Pregnancy and Childbirth

Regulations implementing Title IX of the Education Amendments of 1972, particularly subpart E concerning discrimination on the basis of sex in employment in education programs and activities, and California's Fair Employment and Housing

Act (FEHA) require that pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom be treated as any temporary disability for all job-related purposes including: [20 USC § 1681 et seq.; EC §§ 44965, 87766, 88193; GC § 12943]

1. Commencement, duration and extension of leave. Leaves must be made available for up to four months per pregnancy for the period(s) of actual disability caused by a woman's pregnancy, childbirth, or related medical conditions.
2. Payment of disability income.
3. Accrual of seniority and other benefits or services.
4. Reinstatement to the same or similar position.
5. Transfer to another position if it is medically advisable and the employer can reasonably accommodate the employee. Additionally, the employer can transfer an employee to an alternative position if it is medically advisable for an employee to take intermittent leave or work a reduced schedule.

The governing board shall provide for leaves of absence for any certificated employee because of pregnancy, miscarriage, childbirth, and convalescence therefrom. The length of the leave of absence shall be determined by the employee and the employee's physician.

Sabbatical Leave for Study and Travel

Certificated personnel who have served for at least seven consecutive years in the district may be granted leaves by the governing board for professional study and travel, commonly referred to as sabbatical leave. The leave of absence may be with or without pay for a period not to exceed one year. Any certificated employee granted a leave for professional study and travel shall agree, upon return, to render service equal to twice the period of the leave. [EC §§ 44966-73, 87767-74]

For audit purposes, the district should retain on file: [EC §§ 44969, 87770]

1. The employee's request for leave.
2. The approval of the request by the governing board.
3. The written agreement between the board and the employee defining services to be performed and compensation to be paid.

4. The required bond indemnifying the governing board in the event that the employee fails to render the agreed upon service or a resolution of the governing board waiving this obligation.

Voting Leave

Employees who do not have sufficient time outside of working hours to vote at a statewide election must be granted up to two hours of paid leave for this purpose. The leave must be granted to employees who would not otherwise be able to vote because of their work schedules on election day. The time must be at the beginning or end of the work day, unless otherwise agreed to between the employer and employee. Employees must notify the employer at least two working days in advance of the election of their need for time off to vote. At least ten days before every statewide election, employers must post a notice in a conspicuous place informing employees of the availability of voting leave. [EIC §§ 14000-1]

Workload Balancing Program

A community college district may provide a workload balancing program under which a certificated employee may bank time worked in excess of the hours for a fulltime position for an equivalent paid leave of absence to be granted in a subsequent quarter, semester, or academic year. [EC § 87790]

Holidays

Before the start of each school or college year, the governing board should specify the holidays to be observed by the district. [EC §§ 37220, 44988, 79020]

ADDITIONAL RESOURCES

1. California Chamber of Commerce, HR California, for posters and notices required of employers by State and Federal laws. Available: <<http://www.calchamber.com/HRC/BusinessResources/Posters/posterchart.htm>>
2. California Commission on Teacher Credentialing for credential requirements, application forms and procedures, and status of a pending application. Available: <<http://www.ctc.ca.gov/credentials/default.html>>
3. California Department of Education, Office of School Transportation, for training programs and materials. Available: <<http://www.cde.ca.gov/ls/tn/im/>>
4. Domestic Partners Registry, California Secretary of State Available: <<http://www.ss.ca.gov/dpreistry/index.htm>>

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5. Employment Development Department, State of California. Available: <<http://www.edd.ca.gov/>>
 6. Family and Medical Leave Act, U.S. Department of Labor for news, guidance for employers, laws, posters, recommended forms, and link to Notice of Proposed Rulemaking related to 2008 FMLA amendment. Available: <<http://www.dol.gov/esa/whd/fmla/index.htm>>
 7. Fingerprinting information:

San Diego County Office of Education to request Live Scan appointment. Available: <<http://www.sdcoe.net/livescan/week.asp>>

California Department of Justice, Office of the Attorney General. Available: <<http://caag.state.ca.us/fingerprints/>>
 8. *In re Marriage Cases* (S147999), Supreme Court of California, May 15, 2008. Available: <<http://www.courtinfo.ca.gov/opinions/documents/S147999.PDF>>
 9. No Child Left Behind Act:

California Code of Regulations to search for Title 5, section 6100-6125, NCLB teacher requirements. Available: <<http://www.calregs.com/linkedslice/default.asp?SP=CCR-1000&Action=Welcome>>

California Department of Education and California State Board of Education. Available: <<http://www.cde.ca.gov/nclb/>>

No Child Left Behind Teacher Requirements Resource Guide, 2004, California Department of Education and CDE guidance and presentation materials, 2006. Available: <<http://www.cde.ca.gov/nclb/sr/tq/>>

San Diego County Office of Education, Human Resources and Technology Division. Available: <<http://www.sdcoe.net/hrt/nclb-res.asp>>

U.S. Code, Title 20, section 6319, Qualifications for teachers and paraprofessionals. Available: <http://www4.law.cornell.edu/uscode/html/uscode20/usc_sec_20_00006319----000-.html>

U.S. Department of Education. Available: <<http://www.ed.gov/nclb/landing.jhtml>>

10. San Diego County Schools Risk Management JPA Fringe Benefits Consortium for sample employee training matrix and schedule of safety workshops. Available:
<<http://www.sdcoe.net/business2/?loc=risk-loss&m=4&pi=risk>>
11. Uniformed Services Employment and Reemployment Rights Act (USERRA), U.S. Department of Labor, for links to USERRA regulations, "Questions and Answers," resource guide, and related information. Available:
<<http://www.dol.gov/vets/programs/userra/main.htm>>
12. Williams Settlement:

California Department of Education for sample documents, complaint procedures, "Frequently Asked Questions," and guidance for charter schools. Available:
<<http://www.cde.ca.gov/eo/ce/wc/index.asp>>

San Diego County Office of Education for legislative updates, sample forms, implementation guide, and links to other resources. Available:
<<http://www.sdcoe.net/williams/>>