



# Education Code Manual

Interpreting and Applying  
Education Code Benefits  
for Colleges  
(April 2020)

**This Education Code Manual is provided for informational purposes only and is not intended as legal advice.**

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## INTRODUCTION

Keenan & Associates recognizes that many Districts and claims professionals face a daily challenge of properly interpreting, applying and administering benefits under the Education Code as they pertain to workers' compensation.

While Keenan & Associates does not intend to take the place of the District's General Counsel, this manual was developed to offer suggestions and direction to Districts looking for guidance in this area. Keenan & Associates strongly recommends that all Districts obtain the consent of General Counsel to ensure they are properly applying Education Code benefits. The information contained in this manual is not intended to represent a legal opinion.

This manual is intended to provide a review of the major provisions of the Education Code and how those provisions might be interpreted and applied to District employees who sustain injuries arising out of or in the course of employment.

This manual illustrates the **minimum** benefit level outlined by the Education Code. Through collective bargaining agreements, many Districts provide a higher level of benefit.

The information is broken down into eleven sections:

- 1) Overview of the Education Code
- 2) Classified Community College
- 3) Academic Community College
- 4) Benefit Calculation Worksheets
- 5) Payroll Procedures
- 6) Miscellaneous Educational Code Subjects
- 7) Frequently Asked Questions
- 8) Education Code Reference Sections
- 9) Case Law and Legal Information
- 10) Key Terms and Definitions
- 11) Keenan & Associates Contact Information

## 1. OVERVIEW OF THE EDUCATION CODE

The Education Code was written to provide guidance in all areas of the educational system. The portion of the Education Code this manual will focus on is that which pertains to the administration of workers' compensation benefits and the level of those benefits.

The Education Code outlines benefits applicable to two classes of employees: academic and classified. Benefits outlined in the Education Code are to be considered in conjunction with the Labor Code and thus, may substantially affect workers' compensation benefits of District employees.

The intent of the Education Code was to provide uniformity in the application of benefits however the benefit levels of the two classes can be substantially different.

The basic premise of benefits under the Education Code is simple. At a **minimum**, injured employees are generally entitled to the following:

- A minimum of 60 days of Industrial Accident Leave
- Use of current and accumulated sick time
- Use of current and accumulated vacation time (classified employees only)
- Sub-Differential or 50% Pay
- Other paid leave provisions-Catastrophic Leave
- 39-month rehire list

The type and length of these benefits depends on collective bargaining agreements and the classification of the employee. Collective bargaining agreements may also allow for other types of paid and unpaid leaves such as holiday pay, paid comp days and paid or unpaid leave of absences.

Collective Bargaining Agreements may also affect the way in which workers' compensation benefits are delivered to school district and college employees. Collective Bargaining Agreements must adhere to **at least the minimum benefit level** as dictated by the Education Code and Labor Code.

The Education Code is a matter of law. Changes, revisions, deletions or updates involve the legislative process.

## 2. COMMUNITY COLLEGE CLASSIFIED OVERVIEW

Classified employees are generally those employees who hold non-teaching and non-supervisory positions. As stated in the Education Code, Classified employees should have a designated title, a regular minimum number of assigned hours per day, days per week, and months per year. There should be a specific statement of the duties required to be performed by the employees in each position, and the regular monthly salary ranges for each such position. Examples of classified employees include custodians, maintenance technicians, secretaries, etc.

Absent any specific collective bargaining agreements, a Classified employee injured on the job is entitled to the following:

### 1) INDUSTRIAL ACCIDENT LEAVE

- a) Not less than 60 working days Industrial Accident Leave per fiscal year (7/1 to 6/30) and per injury.
- b) Does not accumulate from year to year.
- c) Industrial Accident Leave begins with the first day of absence.
- d) Payments for lost wages, when combined with the temporary disability cannot exceed regular wages, less any regular deductions (retirement, insurance, etc.).
- e) Industrial Accident Leave will be reduced by one day for each day of authorized absence.
- f) If the Industrial Accident Leave is at the end of the fiscal year and the leave overlaps into the next fiscal year, the employee is entitled to take the amount remaining at the end of the fiscal year. Not to exceed 60 days total.

### 2) SICK AND VACATION LEAVE (CURRENT & ACCUMULATED)

- a. Once Industrial Accident Leave has been exhausted, the employee customarily uses all sick time, accumulated vacation pay or any other available paid time off programs.
- b. Classified employees are entitled to 12 days of sick time per year.
- c. Classified employees, employed for less than a full fiscal year, are entitled to a proportion of the 12 days sick time equivalent to one day per month of employment.
- d. Credit for sick time does not have to be accrued prior to the leave.
- e. New employees are not eligible to take more than six sick days, or the proportionate amount they are entitled to (one day per month) until the first day of the calendar month after completion of six months active service.

- f. Sick/vacation time can accumulate from year to year. Sick/vacation time taken during leave of absence is generally prorated so that only so much of the current or accumulated sick time that when added to workers' compensation, provides a full day's wage.
  - g. Sick/vacation pay when combined with temporary disability shall not exceed regular wages, less any regular deductions (retirement, insurance, etc.).
- 3) **SUB-DIFFERENTIAL PAY OR 50% PAY**

**SUB-DIFFERENTIAL PAY**

- a) After exhausting the 60 days of Industrial Accident Leave, current sick time and any accumulated sick/vacation time, or other paid leave the employee is entitled to sub-differential pay.
- b) The employee's regular salary less the sum actually paid to a substitute employee, less any regular deductions (retirement, insurance, etc.).
- c) Sub-Differential Pay when combined with temporary disability shall not exceed regular wages, less any regular deductions (retirement, insurance, etc.).
- d) If no substitute is hired, the employee receives full pay from the District and temporary disability is made payable to the District.
- e) Sub-Differential Pay commences with the first day of disability and runs concurrently with all other available sick and vacation leave (53 Ops. Cal. Atty. Gen. 111).

**OR**

**100 days at 50% PAY**

- a) 100 working days of sick leave paid at not less than 50% of the employee's regular salary.
- b) 50% Pay when combined with temporary disability shall not exceed regular wages, less any regular deductions (retirement, insurance, etc.).
- c) 50% Pay, combined with sick leave provisions, is limited to a period of five months or less. 100 working days of 50% Pay begins to run after exhausting 60 days Industrial Accident Leave. 50% Pay, combined with sick leave provisions, is limited to a period of 100 working days or less.
- d) At the end of the 100 days the employee may be entitled to any accumulated vacation pay, or other paid leave allowed by the bargaining agreement/District.

- e) If the employee is still entitled to temporary disability benefits per the labor code, the temporary disability is made payable to the District.
- 4) **39-MONTH REHIRE LIST**
- a) After exhausting all leave provisions (the 60 days Industrial Accident Leave, accumulated sick/vacation time, and Sub-Differential or 100 working days of 50% Pay and any other leave provisions) if still off work, and not placed in another position, the employee should be placed on the 39-month rehire list (regular employees) or the 24-month rehire list (probationary employees). NOTE: this provision must be enforced in conjunction with the California Fair Employment & Housing Act (FEHA), which requires the District to evaluate whether further extended unpaid leave for a finite and reasonably short period of time will allow the employee to recover and return to work; and, when an extended unpaid leave is a reasonable accommodation it is in lieu of placing the employee on the rehire list).
- b) When available, the employee shall be put in a vacant position in the same classification as their occupation at time of the injury, before all other candidates except those an employment list established as a result of lack of work or lack of funds, in which case the employee shall be listed in accordance with seniority regulations.
- c) Any employee who is medically released to work and fails to accept an appropriate assignment may be dismissed.

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**Classified  
Sub-Differential Programs**

<b>Ed Code Benefit</b>	Industrial Accident Leave minimum 60 days (88192)	Current Year's Sick Leave Minimum 12 days (88191)	Accumulated Sick Leave and Accumulated Vacation (88192)	Sub-Differential Pay (88196)	39-Month Rehire List (88192)
<b>Limited to total of 5 months or less*</b>					
<b>WC Benefit</b>	TD paid to District as offset to IA (3-day WP applies)	TD paid to District as offset to sick leave; sick leave prorated	TD paid to District as offset to accumulated sick leave; accumulated sick leave prorated	TD paid to Employee (when Sub-Diff + TD less than full wages)  TD paid to District (when Sub-Diff + TD more than full wages)	TD paid to Employee (PD paid when P&S/MMI)
	<b>FDTL</b>	<b>Day 61</b>			

\* Opinion of the California Attorney General, March 27, 1970 (53 Ops. Cal. Atty. Gen. 111) concluded that the five-month period for different pay commences with the first day of disability and is **not** extended by the 60-day Industrial Accident Leave; it runs **concurrently** (or at the same time). Although this case deals with a K-12 District, it can be arguably applied to Community College classified employees.

- FDTL = First Day Time Loss
- WP = Waiting Period
- IA = Industrial Accident Leave
- TD = Temporary Disability
- PD = Permanent Disability
- P&S = Permanent and Stationary
- MMI = Maximum Medical Improvement

**Classified  
50% Pay Programs**

<b>Ed Code Benefit</b>	Industrial Accident Leave minimum 60 days (88192)	Current Year's/Accumulated Sick Leave Minimum 12 days (88191)	50% Pay (45196)	Accumulated Vacation/Other paid leave (88197)	39-Month Rehire List (88192)
	<b>Limited to total of 100 working days or less*</b>				
<b>WC Benefit</b>	TD paid to District as offset to IA (3-day WP applies)	TD paid to District as offset to sick leave; sick leave prorated	TD paid to Employee (when 50% + TD less than full wages)  TD paid to District (when 50% + TD more than full wages)	TD paid to District as offset to accumulated vacation/other leave; accumulated vacation/other leave prorated	TD paid to Employee (PD paid when P&S/MMI)
	<b>FDTL</b>	<b>Day 61</b>			

\* Once Industrial Accident Leave has been exhausted, the 100 working days of 50% pay runs concurrently with current and accumulated sick leave. The combination of sick and 50% pay cannot exceed 100 working days. However, if the employee has additional accumulated vacation or other paid leave that extends beyond the 100 working days of 50% pay, they are entitled to exhaust that leave before being placed on the 39-month rehire list.

- FDTL = First Day Time Loss
- WP = Waiting Period
- IA = Industrial Accident Leave
- TD = Temporary Disability
- PD = Permanent Disability
- P&S = Permanent and Stationary
- MMI = Maximum Medical Improvement

**CCD Classified  
Sub-Differential Example**

Jane Doe, a custodian for XYZ Community College District, was injured on 2/1/19. Jane works full time, five days a week, 40 hours. She earns \$12.00 an hour. Jane has five days current sick leave and four days accumulated sick leave available. Jane also has five days of vacation time available. XYZ Community College District utilizes a Sub-Differential program and has hired a substitute custodian earning \$8.00 an hour.

Average Weekly Wage (AWW) : \$480.00 (\$12.00 an hour x 40 hours a week)  
 Daily Rate of Pay : \$96.00 (\$480.00/5 days)  
 Temporary Disability Rate (TD) : \$320.00 (two-thirds AWW to max of \$1,299.43)  
 Daily TD Rate : \$64.00 (\$320.00/5 days)

	<b>Education Code Benefit</b>	<b>Ed Code and WC Combined</b>
2/2/19 to 4/25/19  (five school months begin to run with the first day of disability per 53 Ops. Cal. Atty. Gen. 111 March 1970)	Industrial Accident Leave (60 working days)	TD + Partial Salary = AWW \$320.00 + \$160.00 = \$480.00
4/26/19 to 6/22/19	Available Sick/Vacation Leave Prorate Formula (or use worksheet):  <u># Available Days x 8 hrs. x Hourly Wages</u> Current Daily Rate of Pay – Daily TD Rate  <u>14 days x 8 hrs. x \$12.00/hour</u> \$96.00 - \$64.00 = <u>1344</u> 32  = 42 days (Available Leave Prorated)	TD + Partial Salary = AWW \$320.00 + \$160.00 = \$480.00
	Sub-Differential Pay  (No sub-differential pay due as the five school months exhausted on 06/20/08 while using current/accumulated sick leave and vacation)	
6/23/19 and ongoing	39-month Rehire List	TD paid to the employee at \$320.00/week until released to return to work or Permanent and Stationary

Example is not adjusted for holidays

### CCD Classified 50% Example

Jane Doe, a custodian for XYZ Community College District, was injured on 4/30/19. Jane works full time, five days a week, 40 hours. She earns \$12.00 an hour. Jane has five days current sick leave and four days accumulated sick leave available. Jane also has five days of vacation time available. XYZ Community College District utilizes a 50% Pay program.

Average Weekly Wage (AWW) : \$480.00 (\$12.00 an hour x 40 hours a week)  
 Daily Rate of Pay : \$96.00 (\$480.00/5 days)  
 Temporary Disability Rate (TD) : \$320.00 (two-thirds AWW to max of \$1,299.43)  
 Daily TD Rate : \$64.00 (\$320.00/5 days)

	Education Code Benefit	Ed Code and WC Combined
5/1/19 to 7/23/19	Industrial Accident Leave (60 working days)	TD + Partial Salary = AWW \$320.00 + \$160.00 = \$480.00
7/24/19 to 8/19/19  (100 working day begins to run on 7/24/19)	Available Sick/Vacation Leave Prorate Formula (or use worksheet):  <u># Available Days x 8 hrs. x Hourly Wages</u> Current Daily Rate of Pay – Daily TD Rate  <u>9 days x 8 hrs. x \$12.00/hour</u> \$96.00 - \$64.00 = <u>864</u> 32  = 27 days (Available Leave Prorated)	TD + Partial Salary = AWW \$320.00 + \$160.00 = \$480.00
8/20/19 to 11/2/19	50% Pay  (73 days available which is the balance of 100 working days after deducting sick/leave which pro rated to 27 days)  50% pay would equal \$240.00, however when added to TD cannot exceed AWW; therefore, District pays \$160.00	TD + \$240.00 = AWW \$320.00 + \$160.00 = \$480.00
11/3/19 to 11/16/19	Available vacation pay or other paid leave  <u># Available Days x 8 hrs. x Hourly Wages</u> Current Daily Rate of Pay – Daily TD Rate  <u>5 days x 8 hrs. x \$12.00/hour</u> \$96.00 - \$64.00 = <u>480</u> 32  = 15 days (Available Leave Prorated)	TD + \$240.00 = AWW \$320.00 = \$160.00 = \$480.00

	<b>Education Code Benefit</b>	<b>Ed Code and WC Combined</b>
11/17/19 and ongoing	39-month Rehire List	TD paid direct to the Employee at \$320.00/week until released to return to work or Permanent and Stationary/ Maximum Medical Improvement

Example is not adjusted for holidays

\*\* [L.C. 4656(c)]. For dates of injury on or after 1/01/08, there is an aggregate limit of 104 weeks within five years from the date of injury [L.C. 4656(c)(2)].

\*\* Beginning in 2006, Labor Code Section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year. The SAWW is defined as the average weekly wage paid to employees covered by unemployment insurance as reported by the U.S. Department of Labor for California for the 12 months ending March 31 in the year preceding the injury.

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### 3. COMMUNITY COLLEGE ACADEMIC OVERVIEW

Academic employees are those employees requiring a special credential by the State of California to perform a job. This includes all instructors, librarians, counselors and certain educational administrators. As stated in the Education Code, an Academic employee refers to a person who holds one or more documents such as a certificate, a credential, or a life diploma, which singly or in combination licenses the holder to engage in the school service designated in the document or documents.

Absent specific collective bargaining agreements, an Academic employee injured on the job is entitled to the following:

#### 1) INDUSTRIAL ACCIDENT LEAVE

- a) Not less than 60 days Industrial Accident Leave per fiscal year (7/1 to 6/30) and per injury:
- b) Does not accumulate from year to year.
- c) Industrial Accident Leave begins with the first day of absence.
- d) Payments for lost wages, when combined with the temporary disability, cannot exceed regular wages, less any regular deductions (retirement, insurance, etc.).
- e) Industrial Accident Leave will be reduced by one day for each day of authorized absence.
- f) If the Industrial Accident Leave is at the end of the fiscal year and the leave overlaps into the next fiscal year, the employee is entitled to take the amount remaining at the end of the fiscal year. Not to exceed 60 days total.

#### 2) SICK LEAVE

- a) Once Industrial Accident Leave has been exhausted, the employee customarily uses all current sick time and accumulated sick leave:
- b) Academic employees are entitled to a minimum of 10 days of sick time per year.
- c) Academic employees, employed less five school days per week, are entitled to a portion of the 10 days based on the number of days worked per week.
- d) Credit for sick time does not have to be accrued prior to the leave.
- e) Sick time can accumulate from year to year.
- f) Sick time taken during leave of absence should be prorated to use only so much of the current or accumulated sick time that when added to workers' compensation, provides a full day's wage (Education Code §87787).

- g) Sick pay when combined with temporary disability shall not exceed regular wages, less any regular deductions (retirement, insurance, etc.).

3) **SUB-DIFFERENTIAL PAY OR 50% PAY**

**SUB-DIFFERENTIAL PAY**

- a) After exhausting the 60 days of Industrial Accident Leave, current and accumulated sick the employee is entitled to sub differential.
- b) The employee's regular salary less the sum actually paid to a substitute employee, less any regular deductions (as determined by the governing board of the district).
- c) Sub-Differential Pay, when combined with temporary disability, shall not exceed regular wages, less any regular deductions (as determined by the governing board of the district).
- d) If no substitute is hired, the employee receives their regular salary less the sum that **would have been paid** to the substitute [Education Code § 87780(a)].
- e) Sub-Differential Pay begins to run **after** the exhaustion of 60 days Industrial Accident Leave, current sick time and any accumulated sick time, and is limited to a period of five months or less per injury or accident.

**OR**

**50% PAY**

- a) Five months or less paid at not less than 50% of the employee's regular salary.
- b) 50% Pay when combined with temporary disability shall not exceed regular wages, less any regular deductions (as determined by the governing board of the district).
- c) 50% Pay, combined with all other leave provisions, is limited to a period of five months or less.
- d) The five-month period of 50% Pay begins to run **after** the exhaustion of the 60 days Industrial Accident Leave and current sick time but runs **concurrently (or at the same time)** with accumulated sick time.

4) **39-MONTH REHIRE LIST**

- a) After exhausting all leave provisions (the 60 days Industrial Accident Leave, accumulated unused sick time, and five months Sub-Differential or 50% Pay) if still off work, and not placed in another position, the employee should be placed on the 39-month rehire list.

- b) When the employee is medically able, the employee shall be returned to employment in a position for which they are credentialed.
- c) If the employee is on probationary status, they are placed on a 24-month rehire list.

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**Academic  
Sub-Differential Programs**

<b>Ed Code Benefit</b>	Industrial Accident Leave minimum 60 days (87787)	Current Year's Sick Leave Minimum 10 days (87781)	Accumulated Sick Leave (87787)	Sub-Differential Pay (87780)	Benefits Exhausted (check collective bargaining agreement)
				<b>Limited to 5 school months*</b>	
<b>WC Benefit</b>	TD paid to District as offset to IA (3-day WP applies)	TD paid to District as offset to sick leave; sick leave prorated	TD paid to District as offset to accumulated sick leave; accumulated sick leave prorated	TD paid to Employee (when Sub-Diff + TD less than full wages)  TD paid to District (when Sub-Diff + TD more than full wages)	TD paid to Employee (PD paid when P&S/MMI)
	<b>FDTL</b>	<b>Day 61</b>			

\* Once Industrial Accident Leave, Current Year's Sick Leave and Accumulated Sick Leave are exhausted, Sub-Differential pay begins. Sub-Differential pay is limited to five school months per accident or injury.

- FDTL = First Day Time Loss
- WP = Waiting Period
- IA = Industrial Accident Leave
- TD = Temporary Disability
- PD = Permanent Disability
- P&S = Permanent and Stationary
- MMI = Maximum Medical Improvement

**Academic  
50% Pay Programs**

Ed Code Benefit	Industrial Accident Leave minimum 60 days (87787)	Current Year's Sick Leave Minimum 10 days (87781)	Accumulated Sick Leave (87787)	50% Pay (87786)	Benefits Exhausted (check collective bargaining agreement)
			Limited to total of 5 school months or less*		
WC Benefit	TD paid to District as offset to IA (3-day WP applies)	TD paid to District as offset to sick leave; sick leave prorated	TD paid to District as offset to accumulated sick leave; accumulated sick leave prorated	TD paid to Employee (when 50% + TD less than full wages)  TD paid to District (when 50% + TD more than full wages)	TD paid to Employee (PD paid when P&S/MMI)
	<b>FDTL</b>	<b>Day 61</b>			

\* Once Industrial Accident Leave and Current Year's Sick Leave are exhausted, the five months of 50% Pay runs **concurrently (at the same time)** with accumulated Sick Leave. The employee begins receiving 50% Pay only after accumulated Sick Leave exhausted. The combination of accumulated Sick Leave and 50% Pay cannot exceed five school months.

- FDTL = First Day Time Loss
- WP = Waiting Period
- IA = Industrial Accident Leave
- TD = Temporary Disability
- PD = Permanent Disability
- P&S = Permanent and Stationary
- MMI = Maximum Medical Improvement

### Academic Sub-Differential Pay Example

David Smith, a permanent full-time instructor for Achiever's Community College District, was injured on 4/1/19. David earns \$790.00 per week and has 10 days current sick leave and five days accumulated sick days. Achiever's Community College District utilizes a Sub-Differential program and has hired a substitute instructor earning \$500.00 per week.

Average Weekly Wage (AWW)	:	\$790.00
Daily Rate of Pay	:	\$158.00 (\$790.00/5 days)
Temporary Disability Rate (TD)	:	\$526.67 (two-thirds AWW to max of \$1,299.43)
Daily TD Rate	:	\$105.33 (\$526.67/5 days)

	Education Code Benefit	Ed Code and WC Combined
4/2/19 to 6/24/19	Industrial Accident Leave (60 working days)	TD + Partial Salary = AWW \$526.67 + \$263.33 = \$790.00
6/25/19 to 8/19/19	Available Sick Leave Prorate Formula (or use worksheet):  <u># Available Days x Current Daily Rate of Pay</u> Current Daily Rate of Pay – Daily TD Rate  <u>15 days x \$158.00</u> \$158.00 - \$105.33 = <u>2370</u> 52.67  = 45 days (Available Leave Prorated)	TD + Partial Salary = AWW \$526.67 + \$263.33 = \$790.00
8/20/19 to 1/7/20  (five school months begin)	Sub-Differential Pay  (The difference between the employee's weekly salary of \$790.00 and the substitute salary of \$500.00 is \$290.00. TD + the sub-differential is more than the AWW; therefore, the District will only pay \$263.33.)	TD + Sub-Differential = AWW \$526.67 + \$263.33 = \$790.00
1/8/20 and ongoing	39-month Rehire List	TD paid at \$526.67/week until released to return to work or Permanent and Stationary

Example is not adjusted for holidays

37201(1) defines a school month as 20 days or four weeks of five days each including legal holidays for attendance purposes.

\*\* Beginning in 2006, Labor Code section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year. The SAWW is defined as the average weekly wage paid to employees covered by unemployment insurance as reported by the U.S. Department of Labor for California for the 12 months ending March 31 in the year preceding the injury.

### Academic 50% Pay Example

David Smith, a permanent full time instructor Achiever's Community College District, was injured on 4/1/19. David earns \$790.00 per week and has 10 days current sick leave and five days accumulated sick days. Achiever's Community College District utilizes a 50% Pay program.

Average Weekly Wage (AWW) : \$790.00  
 Daily Rate of Pay : \$158.00 (\$790.00/5 days)  
 Temporary Disability Rate (TD) : \$526.67 (two-thirds AWW to max of \$1,299.43)  
 Daily TD Rate : \$105.33 (\$526.67/5 days)

	Education Code Benefit	Ed Code and WC Combined
4/2/19 to 6/24/19	Industrial Accident Leave (60 working days)	TD + Partial Salary = AWW \$526.67 + \$263.33 = \$790.00
6/25/19 to 7/31/19	Available Current Sick Leave Prorate Formula (or use worksheet):  $\frac{\# \text{ Available Days} \times \text{Current Daily Rate of Pay}}{\text{Current Daily Rate of Pay} - \text{Daily TD Rate}}$ $\frac{10 \text{ days} \times \$158.00}{\$158.00 - \$105.33} =$ $\frac{1580}{52.67}$ = 30 days (Available Leave Prorated)	TD + Partial Salary = AWW \$526.67 + \$263.33 = \$790.00
8/1/19 to 8/20/19  (five school months begin)	Accumulated Sick Leave Prorate Formula (or use worksheet)  $\frac{\# \text{ Available Days} \times \text{Current Daily Rate of Pay}}{\text{Current Daily Rate of Pay} - \text{Daily TD Rate}}$ $\frac{5 \text{ days} \times \$158.00}{\$158.00 - \$105.33} =$ $\frac{790}{52.67}$ = 15 days (Available Leave Prorated)	TD + Partial Salary = AWW \$526.67 + \$263.33 = \$790.00
8/21/19 to 12/19/19	50% Pay  (85 working days available as balance of five school months which commences after current sick leave and concurrently with accumulated sick leave)	TD + 50% Pay = AWW \$526.67 + \$263.33 = \$790.00  (Note that 50% pay is \$395.00; however, when added to TD cannot exceed AWW therefore District only pays \$263.33)

	<b>Education Code Benefit</b>	<b>Ed Code and WC Combined</b>
12/20/19 and ongoing	39-month Rehire List	TD paid at \$526.67/week until released to return to work or Permanent and Stationary

Example is not adjusted for holidays

37201(1) defines a school month as 20 days or four weeks of five days each including legal holidays for attendance purposes.

\*\* Beginning in 2006, Labor Code section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year. The SAWW is defined as the average weekly wage paid to employees covered by unemployment insurance as reported by the U.S. Department of Labor for California for the 12 months ending March 31 in the year preceding the injury.

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## 4. BENEFIT CALCULATION WORKSHEETS

### Sick and Vacation Leave Pro-Rata Formula Worksheet

1. Hours of Available Sick Time (current and accumulated)	_____
2. Average Weekly Wage (AWW)	\$ _____
(hourly wage _____ x daily hours _____ x days worked per week _____)	
3. Weekly Temporary Disability (TD) Rate	\$ _____
(AWW ÷ 1.5 maximum of \$1,299.43/week)**	
4. Daily Temporary Disability (TD) Rate	\$ _____
(weekly rate from #3 ÷ days worked/week.)	
5. Current Daily Rate of Pay	\$ _____
(AWW ÷ days worked/week. ÷ daily hours)	
6. Current Hourly Rate of Pay (AWW ÷ days worked/week ÷ daily hours)	\$ _____
<b>Pro-Rata Calculation</b>	
7. Daily rate of Pay (#5)	\$ _____
8. Subtract Daily TD Rate (#4)	- \$ _____
	= \$ _____
9. Divide by Hourly Rate of Pay (#6)	÷ \$ _____
10. Equals number Sick/Vacation Hours to Deduct for each day of Disability	= _____
11. Number Sick Hours Available (#1)	_____
12. Divide by #10	÷ _____
13. Equals Number of Days of Prorated sick or Vacation Leave	= _____
* If #13 is a negative number, determination needs to be made if two checks should be issued; (1) to the district in the amount of the employee's AWW. (2) to the employee for the difference of the weekly minimum TD rate and the AWW	

### Sick and/or Vacation Leave Pro-Rata Formula Worksheet

Example: Classified employee working eight hours per day, earning \$7.00 an hour. Has exhausted 60 days Industrial Accident Leave and has 42 hours of Current and Accumulated Sick Leave available. AWW is \$280.00 ( $\$7.00 \times 8 \text{ hours} \times 5 \text{ days}$ ).

1. Hours of Available Sick Time (current and accumulated)	<u>42</u>
2. Average Weekly Wage (AWW)	<u>\$ 280.00</u>
(hourly wage <u>\$7.00</u> x daily hours <u>8</u> x days worked per week <u>5</u> )	
3. Weekly Temporary Disability (TD) Rate (AWW $\div$ 1.5 maximum of \$1,299.43)	<u>\$ 186.67</u>
4. Daily Temporary Disability (TD) Rate (weekly rate from #3 $\div$ days worked/week) $\$186.67 \div 5$	<u>\$ 37.33</u>
5. Current Daily Rate of Pay (AWW $\div$ days worked/week) $\$280 \div 5$	<u>\$ 56.00</u>
6. Current Hourly Rate of Pay (AWW $\div$ days worked/week $\div$ daily hours) $\$280 \div 5 \div 8$	<u>\$ 7.00</u>
<b>Pro-Rata Calculation</b>	
7. Daily rate of Pay (#5)	<u>\$ 56.00</u>
8. Subtract Daily TD Rate (#4)	- <u>\$ 37.33</u>
	= <u>\$ 18.67</u>
9. Divide by Hourly Rate of Pay (#6)	$\div$ <u>\$ 7.00</u>
10. Equals number Sick/Vacation Hours to Deduct for each day of Disability	= <u>2.67</u>
11. Number Sick Hours Available (#1)	<u>42</u>
12. Divide by #10	$\div$ <u>2.67</u>
13. Equals Number of Days of Prorated sick or Vacation Leave	= <u>15.73</u>
* If #13 is a negative number, determination needs to be made if two checks should be issued; (1) to the district in the amount of the employee's AWW. (2) to the employee for the difference of the weekly minimum TD rate and the AWW	

- Note: If classified sub-differential pay, prorate sick and vacation time together. If 50% pay, prorate the sick and vacation time separately.
- Beginning in 2006, Labor Code Section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year.

**Sub-Differential or 50% Pay Calculation Worksheet**

1. Average Weekly Wage (AWW) (hourly wage x daily hours x days worked per week)	\$ _____
2. Current Daily Rate of Pay (AWW #1 ÷ days worked per week)	\$ _____
3. Weekly Temporary Disability (TD) Rate (AWW #1 ÷ 1.5 maximum of \$1,299.43)**	\$ _____
4. Daily Temporary Disability (TD) Rate (weekly TD rate from #3 ÷ days worked per week)	\$ _____
5. Daily Sub-Differential Pay Rate (District provides), <u>or</u>	\$ _____
Daily 50% Pay Rate (District provides)	\$ _____
 <b>Benefit Calculation</b>	
6. Daily Sub-Differential or 50% Pay Rate	\$ _____
7. Add Daily TD Rate (#4)	+ \$ _____
8. Subtract Current Rate of Pay (#2)	- \$ _____
9. Equals Amount Over/Under Current Daily Rate of Pay	= \$ _____
 <b>District determines if TD is paid to the District or paid directly to the employee.</b>	

\*\* For benefits that commence on or after 4/19/04, there is an aggregate limit of 104 weeks within a two-year period [L.C. 4656(c)]. For dates of injury on or after 1/01/08, there is an aggregate limit of 104 weeks within five years from the date of injury [L.C. 4656(c)(2)].

\*\* Beginning in 2006, Labor Code section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year. The SAWW is defined as the average weekly wage paid to employees covered by unemployment insurance as reported by the U.S. Department of Labor for California for the 12 months ending March 31 in the year preceding the injury.



### Sub-Differential or 50% Pay Calculation Worksheet

Example: Academic employee makes \$17.50 per hour, working 8 hours per day, 5 days per week and earns \$700.00 per week. Substitute hired at \$100.00 per day, 5 days per week and earns \$500.00 per week.

1. Average Weekly Wage (AWW) ( $\$17.50 \times 8 \text{ hours} \times 5 \text{ days}$ )	<u>\$ 700.00</u>
2. Current Daily Rate of Pay ( $\$700 \div 5 \text{ days}$ )	<u>\$ 140.00</u>
3. Weekly Temporary Disability (TD) Rate ( $\$700.00 \div 1.5 \text{ maximum of } \$1,299.43$ )**	<u>\$ 466.66</u>
4. Daily Temporary Disability (TD) Rate ( $\$466.66 \div 5 \text{ days}$ )	<u>\$ 93.33</u>
5. Daily Sub-Differential Pay Rate (District provides), <b>or</b>	<u>\$ 100.00</u>
Daily 50% Pay Rate (District provides)	<u>\$</u>
<b>Benefit Calculation</b>	
6. Daily Sub-Differential or 50% Pay Rate	<u>\$ 100.00</u>
7. Add Daily TD Rate (#4)	+ <u>\$ 93.33</u>
8. Subtract Current Rate of Pay (#2)	- <u>\$ 140.00</u>
9. Equals Amount Over/Under Current Daily Rate of Pay	= <u>\$ 53.33</u>
District determines if TD is paid to the District or paid directly to the employee.	

\*\* Beginning in 2006, Labor Code section 4453(a)(10) required the rate for TTD be increased by an amount equal to the percentage increase in the SAWW as compared to the prior year. The SAWW is defined as the average weekly wage paid to employees covered by unemployment insurance as reported by the U.S. Department of Labor for California for the 12 months ending March 31 in the year preceding the injury.

## 5. PAYROLL PROCEDURES

### Workers' Compensation Industrial Leave Recommended Payroll Procedures

#### Classified Procedures (accepted injuries)

- 1) Familiarize yourself with your District's collective bargaining agreement. Collective Bargaining Agreements must be considered in conjunction with benefit levels of the Education Code and the Labor Code (although the minimum benefits of each must be met).
  - a) What is the allowable Industrial Accident Leave? (minimum of 60 days)
  - b) What is the allowable yearly sick leave benefit? (minimum of 12 days)
  - c) Are there any other leave benefits afforded to classified employees?
  - d) Does the contract include a Sub-Differential or 50% Pay program?
  - e) When does Sub-Differential and 50% Pay commence?
  - f) Are there other paid leave provisions of the contract, or catastrophic leave program option?
  - g) Is the Family & Medical Leave Act (FMLA) or the California Family Rights Act (CFRA) applicable for the employee's own serious health condition up to a maximum of 12-work weeks? (Consult Human Resources; job protected statutory leave should be designated in writing and runs concurrently with all other leave benefits).
- 2) Determine the current and accrued sick leave and vacation balance for the injured employee under review.
  - a) Keep in mind that Ed Code § 88192 allows for a minimum of 60 "working days" of Industrial Accident Leave which equates to approximately 12 "calendar" weeks or three "calendar" months of salary continuation.
  - b) Current and accumulated sick leave, as well as accrued vacation time, must be prorated so as to use only that portion of leave that, when combined with temporary disability, equals one day full pay (see prorate calculation worksheets on pages 20-21).
- 3) When all paid leave is exhausted (Industrial Accident, current and accumulated sick leave and accrued vacation time), the employee receives either Sub-Differential or 50% Pay depending on the labor contract.

- a) If the combination of Sub-Differential/50% Pay and temporary disability is greater than the employee's average weekly wage, the District should pay the employee full salary. Keenan & Associates will pay the temporary disability directly to the District.
  - b) If the combination of Sub-Differential/50% Pay and temporary disability is less than the employee's average weekly wage, the District should pay only the Sub-differential/50% pay. Keenan & Associates will pay the temporarily disability directly to the injured employee.
  - c) Sub-Differential Pay is limited to a total of five calendar months and is not extended by Industrial Accident Leave, sick leave or vacation (53 Ops. Cal. Atty. Gen. 111).
  - d) 50% Pay is limited to 100 working days commencing after Industrial Accident Leave is exhausted and runs **concurrently** (or at the same time) with all sick leave.
  - e) Once an employee exhausts their 100 days, the employee is entitled to utilize any remaining vacation/or other paid leave.
- 4) After all leaves are exhausted (paid and unpaid), if the employee remains disabled, the employee should be placed on the 39-month rehire list. School District Personnel/Payroll should send a Cessation of Benefits Notice to the employee at least 30 days before benefits are to terminate.
- a) A copy of the letter should be sent to Keenan & Associates.
  - b) Retain a copy in the personnel file.
  - c) Sample letter attached on page 28. It is recommended that you consult with General Counsel to ensure the language of the letter is appropriate for the District.

**Note:** Industrial Leave and all other benefits described above are only applicable when an authorized treating physician provides verification of disability.

## Workers' Compensation Industrial Leave Recommended Payroll Procedures

### Academic Procedures (accepted injuries)

- 1) Familiarize yourself with your District's collective bargaining agreement. Collective Bargaining Agreements must be considered in conjunction with the benefit levels of the Education Code and the Labor Code (although the minimum benefits of each must be met).
  - a) What is the allowable Industrial Accident Leave? (minimum of 60 days)
  - b) What is the allowable yearly sick leave benefit? (minimum of 10 days)
  - c) Are there any other leave benefits afforded to academic employees?
  - d) Does the contract include a Sub-Differential or 50% Pay program?
  - e) When does Sub-Differential and 50% Pay commence?
  - f) Family Medical Leave Act (FMLA) applicable? (Consult Human Resources, benefit should run concurrent with all other leave benefits).
- 2) Determine the current and accrued sick leave and vacation balance for the injured employee under review.
  - a) Keep in mind that 87787 allows for a minimum of 60 "working days" of Industrial Accident Leave which equates to approximately 12 "calendar" weeks or three "calendar" months of salary continuation.
  - b) Current and accumulated sick leave, as well as accrued vacation time, must be prorated so as to use only that portion of leave that, when combined with temporary disability, equals one day full pay (see prorate calculation worksheets on pages 20-21).
- 3) After exhaustion of Industrial Accident Leave use prorated days from current sick leave.
- 4) When current sick leave is exhausted use prorated accumulated sick leave.
- 5) When all paid leave is exhausted (Industrial Accident, current and accumulated sick leave), the employee receives either Sub-Differential or 50% Pay depending on the labor contract.
  - a) If the combination of Sub-Differential/50% Pay and temporary disability is greater than the employee's average weekly wage, the District should pay the employee full salary. Keenan & Associates will pay the temporary disability directly to the District.

- b) If the combination of Sub-Differential/50% Pay and temporary disability is less than the employee's average weekly wage, the District should pay only the Sub-Differential/50% Pay. Keenan & Associates will pay the temporary disability directly to the injured employee.
  - c) Sub-Differential Pay is limited to a total of five school months and commences **after** the exhaustion of Industrial Accident Leave, current and accumulated sick leave.
  - d) 50% Pay is limited to five school months and commences **after** exhaustion of Industrial Accident Leave and current year's sick leave. It runs **concurrently (or at the same time)** with accumulated sick leave.
- 6) After all leaves are exhausted (paid and unpaid), the Education Code is silent about continuing leave benefits. If the collective bargaining agreement allows for a 39-month rehire list, School District Personnel/Payroll should send a Cessation of Benefits Notice to the employee at least 30 days before benefits are to terminate.
- a) A copy of the letter should be sent to Keenan & Associates.
  - b) Retain a copy in the personnel file.
  - c) Sample letter attached on page 29. It is recommended that you consult with General Counsel to ensure the language of the letter is appropriate for the District.

**Note:** Industrial Leave and all other benefits described above are only applicable when an authorized treating physician provides verification of disability.

## Workers' Compensation Industrial Leave Recommended Payroll Procedures

### Handling Questionable Claims

- 1) If a claim for workers' compensation is under investigation by Keenan & Associates, all absences should be recorded to the employee's current year's sick leave and **not** Industrial Accident Leave. If current year's sick leave is exhausted, utilize any accumulated sick leave.
- 2) A copy of the DWC-D (Delay Notice) will be sent to the employee and the Workers' Compensation contact at the District.
- 3) Although every attempt is made to make decisions regarding compensability as quickly as possible, Labor Code 5402 allows 90 days from date of receipt of the DWC-1 (Claim Form) to determine compensability. During these 90 days (or sooner) investigations are conducted and medical evaluations are obtained.
- 4) If the claim is denied, a copy of the DWC-E (Denial Notice) will be sent to the employee and a copy to the Workers' Compensation contact at the District. Absences should continue to be recorded to the employee's current and/or accumulated sick leave.
- 5) If the claim is determined compensable and accepted, a letter will be sent to the employee with a copy to the Workers' Compensation contact at the District.
  - a) Current sick leave and/or accumulated sick leave should be reinstated.
  - b) Absences should be charged to Industrial Accident Leave.
  - c) Pro-rata formula should be used to determine appropriate sick leave deductions if any (if absences beyond Industrial Accident Leave period).
  - d) Keenan & Associates to issue temporary disability payments to District to offset Industrial Accident Leave and sick leave. Vouchers will be issued where appropriate.
- 6) Follow procedures for accepted claims.

## Sample Cessation of Benefits Notice

MM/DD/YY

Employee Name and Address

Subject:

Dear (name):

According to records you will be exhausting all available paid and unpaid leaves on (date). This includes entitlement to 60 days' Industrial Leave, available sick leave, available vacation time and Sub-Differential/50% Pay.

In accordance with the benefit provisions of the Education Code, once all available paid and unpaid leave of absences have been exhausted, you will be placed on a 39-month rehire list. Once on the 39-month rehire list, if and when you become medically able to return to work it is important that you notify us immediately.

You may request an unpaid leave of absence beginning (date). This request should be addressed to your immediate supervisor and include a statement from your treating physician estimating your date to return to work. This request is subject to the approval of both your Superintendent and the Board of Trustees.

In the event that your request for leave of absence is approved, it will be necessary for you to remit the monthly premiums for continuance of your group insurance if you wish to continue your present coverage through the County Office of Education group plan.

Benefit premiums are paid one month in advance of coverage; therefore, premium checks must be received by the Personnel Services Department by the tenth of each month. The total premium amount due by (date) is (amount) which reflects:

(amount)	(name of health plan)
(amount)	(name of health plan)
(amount)	(Any other benefit plans)

You have the option of paying the benefit premiums on any or all of the plans noted above. Please make all premium checks payable to the District.

Upon release from your treating physician to return to work, you will need to submit a written statement from your doctor confirming your release to return to work and any necessary medical restrictions.

Please feel free to contact me at (phone number) if you have any questions regarding continuance of your employee benefits.

We wish you a speedy recovery.

Sincerely,

(name)  
(title)

cc: Keenan & Associates

**Sample Accumulated Sick and Accrued Vacation Leave Notice  
(Classified Only)**

MM/DD/YY

Employee Name and Address

Subject:

Dear (name):

According to records, your entitlement to the 60 days' Industrial Leave and current sick leave will be exhausted on (date).

Since you continue to be disabled and unable to return to work, we will begin utilizing your accumulated sick leave and accrued vacation time effective (date). Your sick leave and vacation time will be prorated so that only that portion of leave will be used, when combined with temporary disability, to equal your full salary.

Utilizing accumulated sick leave and vacation time will allow us to continue your full salary however, you can elect not to utilize this time and begin receiving only Sub-Differential or 50% Pay. Please notify us prior to the termination of your current sick leave if you do not wish for us to utilize accumulated sick leave and vacation time.

Please feel free to contact me at (phone number) if you have any questions.

We wish you a speedy recovery.

Sincerely,

(name)  
(title)

cc: Keenan & Associates



## 6. MISCELLANEOUS EDUCATION CODE SUBJECTS

Various questions have come up concerning the Education Code and applicable benefits. It is always advisable that you consult with your Legal Counsel to ensure proper application of Education Code benefits. Below are highlighted various questions received and what our research has concluded. This information should not be construed as a legal opinion or legal representation.

### **Are Security Guards who Carry Firearms Considered “Peace Officers” and thereby Entitled to Increased Benefits under LC3212.5?**

Education Code Section 38001.5 states that security guards may carry guns if they have the appropriate training per the penal codes. It does not state they are peace officers as a result of carrying the firearm. LC3212.5 states that peace officers that are entitled to increased benefits are defined by Penal Code 830.1; 830.2; and 830.3. These Penal Code sections make no reference to security guards, whether carrying a firearm or not. Carrying a firearm in itself does not entitle a security guard to peace officer benefits under LC3212.5.

### **Ed. Code Section 44956.**

- 1) Any permanent employee whose services have been terminated as provided in Section 44955 shall have the following rights:
  - a) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty; provided that his services may be terminated upon the return of duty of said other employee and that said substitute service shall not affect the retention of his previous classifications and rights. If, in any school year the employee serves as a substitute in any position requiring certification for any 21 days or more within a period of 60 school days, the compensation the employee receives for substitute service in that 60-day period, including his or her first 20 days of substitute service, shall be not less than the amount the employee would receive if he or she were being reappointed.
  - b) During the period of the employee’s right to reappointment, the governing board of the district, if it is also the governing board of one or more other districts, may assign him to service, which he is certificated and competent to render, in said other district or districts; provided, that the compensation he receives therefore may in the discretion of the governing board be the same as he would have received had he been serving in the district from which his services were terminated, that his service in the said other district or districts shall be counted toward the period required for both state and local retirement, as defined by Section 22102, as though rendered in the district from which his services were terminated, and that no permanent employee in said other district or districts shall be displaced by him.

**Ed. Code Section 44957.**

Any probationary employee whose services have been terminated as provided in Section 44955 shall have the following rights:

- 1) During the period of his preferred right to reappointment, any such employee shall, in the order of original employment, and subject to the rights of permanent employees as set forth in Section 44956, be offered prior opportunity for substitute service during the absence of any other employee who has been granted leave of absence or who is temporarily absent from duty; provided, that his services may be terminated upon a return of duty of such other employee, that such substitute service shall not affect the retention of his previous classification and rights, and that such an employee shall be given a priority over employees whose right to a substitute position is derived pursuant to Section 44918.

(Remainder of page intentionally left blank)

## 7. FREQUENTLY ASKED QUESTIONS

### **Is a District obligated to continue group health contributions when an employee is placed on the 24/39-month rehire list?**

Many workers' compensation defense attorneys would recommend to a District that as long as an employee is disabled as a result of a work-related injury, group health premiums should continue. Discontinuing or terminated group coverage could put an employer at risk of a 132a for alleged discrimination. Labor attorneys might argue that once all benefits provided by the Education Code are exhausted, the District employee is on an "unpaid" leave of absence and recommend the District discontinue or terminate the group health contributions. Each District should evaluate this situation carefully and consult with their General Counsel or Labor Attorney for policy.

### **Can the Board of Trustees designate up to three years of services before a classified employee is entitled to benefits under the Education Code?**

§88192 (classified) states the governing board may require that an employee serve continuously for a specific period of time, not to exceed three years, before they are entitled to the 60 days Industrial Accident Leave. Temporary disability benefits would be paid regardless of the years of service. The unions may view this as a highly unfavorable position and thus, we have not seen this exemption applied. The Education Code is silent about probationary periods for academic employees.

### **When Sub-Differential or 50% Pay applies, should the district only pay that portion due to the employee or their entire wages/salary and seek reimbursement from Keenan & Associates?**

It is recommended that the district pays the employee their full wages/salary less any applicable deductions such as insurance premiums and retirement. Keenan & Associates will issue the temporary disability check payable to the district.

### **Can the district remove an employee from the 39-month rehire list once the employee starts vocational rehabilitation?**

No. Education Code and Labor Code benefits are separate. Entitlement to any benefit under the Labor Code, such as vocational rehabilitation, permanent disability or settlements, does not waive the school employee's right to Education Code benefits. Unless the school employee has voluntarily terminated their employment, they cannot be removed from the 39-month rehire list.

### **Does every full-time employee get Ed Code leave benefits?**

Yes. However, the District may adopt a policy that delays classified employees from Ed Code benefits for up to the first three years of employment. Check with your District on its policy.

**Is there a waiting period for Ed Code benefits?**

No. For academic and classified employees, the Ed Code states that industrial leave commences on the “first day of absence”. The waiting period would apply to workers’ compensation payments but not to Ed Code benefits.

**Does overtime apply to WC and Ed Code benefits?**

Yes and no. As we know, regular, documented overtime is included in the temporary disability rate calculation. A question arises when asked whether the District must also include the overtime in the Ed Code benefit. For classified employees Ed Code Section 45192(d) states that benefits shall not exceed the employee’s “normal wage for the day”. Ed Code Section 44043 states that the employee shall receive his/her “normal wage”. Putting these together, it would appear that the District should not include overtime in the Ed Code benefit. You may also caution the District that if we increase the TD rate, based on overtime, the District should ensure that the combined benefits do not exceed the “normal wage”.

**Who gets the TD checks?**

It depends. LC 4902 states that checks will be sent directly to the employee. Ed Code Section 45192 states that academic employees may endorse the check to the District and Ed Code Section 87787 states that classified employees shall endorse the check to the District. Many Districts have instituted a policy that checks should be made payable to the District and sent to the District. Others have the employee keep the check and the District subtracts the amount from their regular pay. Still, other Districts want the employee to sign the check over to the District. We must work with each District to determine the best way for this benefit to be coordinated.

**Does Ed Code apply to partial days off?**

It depends. We know that workers’ compensation benefits are only due when there is a medically authorized disability. Is two hours off to go to PT a disability? Ed Code Sections 87787 and 45192 states that industrial leave “shall be reduced by one day for each authorized absence regardless of a temporary disability indemnity award”. Is two hours off to go to PT “one day?” Ed Code Section 45191 allows classified employees leave of absence days based on length of service. Some Districts charge Ed Code disability benefits for any partial day so that the 60 days are actually 480 hours.

**How does FMLA affect the 39-month rehire list and Education Code benefits?**

First, Districts need to make sure they are in compliance with FMLA and CFRA posting requirements and pursuant to CFRA regulations that they establish a written policy (or contractual provision) that specifies the “12-month benefit year” the District elects for applying FMLA-CFRA. Should the employee request FMLA they are entitled to up to 12 weeks leave in the same 12-month benefit year selected by the District (options are Fiscal Year, Calendar year, or a rolling 12-month period measured backwards, or measured forwards). The District may delay placement on the 39-month rehire list and require the

District to continue health coverage during the FMLA-CFRA period. Districts should consider initiating FMLA-CFRA leaves for employees with qualifying serious health conditions. FMLA-CFRA can run concurrently (at the same time) with Education and workers' compensation benefits; however, the District must so designate the leave and all terms and conditions in writing in order for the FMLA-CFRA leave period to begin to run. It is recommended you consult with legal counsel on all FMLA-CFRA and FEHA issues, to obtain advice on leave periods, and managing the leave designation processes under FMLA-CFRA and the interactive process under FEHA.

### **How does the maximum of 104 weeks of temporary disability affect Education Code Benefits?**

During the 104 weeks of temporary disability the benefits would be integrated with the applicable Education Code benefits. When the maximum 104 weeks of temporary disability ends, the employee would still be entitled to any remaining Education Code benefits.

### **When can an employee use Catastrophic Leave?**

Catastrophic leave is an additional paid leave benefit and should be used after all other paid leaves, but prior to placing the employee on 39 month rehire status.

### **Once an employee is placed on 39-month rehire list, is the District obligated to conduct an interactive process with that employee?**

Yes, if the employee was not permanent and stationary or reached maximum medical improvement at the time the employee was placed into the 39-month rehire status.

### **What other benefits need to be evaluated when an accommodation is not possible?**

#### **CalSTRS**

- Exhaust all available state and federal leaves (FMLA/CFRA)
- Follow Collective Bargaining Agreement/Administrative Policies and Personnel Rules relating to separation and use of personal leave

#### **CalPERS**

- Exhaust all available state and federal leaves (FMLA/CFRA)
- Follow Collective Bargaining Agreement/Administrative Policies and Personnel Rules relating to separation and use of personal leave
- Place on 39-month re-employment leave (Ed Code Sec 44195), if applicable and simultaneously follow Government Code Section 21153, Employer usually generates disability paperwork/application

## 8. EDUCATION CODE REFERENCE SECTIONS

Included as a reference are applicable Education Code sections as of 12/31/00. Further information can be obtained via the Internet at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

### Academic Leave of Absence

#### § 87780 (Sub-Differential Pay)

When a person employed in an academic position is absent from his or her duties on account of illness or accident for a period of five school months or less, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due the employee for any month in which the absence occurs shall not exceed the sum that is actually paid a temporary employee employed to fill his or her position during his or her absence or, if no temporary employee was employed, the amount that would have been paid to the temporary employee had he or she been employed. The community college district shall make every reasonable effort to secure the services of a temporary employee.

The governing board of every community college district shall adopt a salary schedule for temporary employees. The salary schedule shall indicate a salary for a temporary employee for all categories or classes of academic employees of the district.

Except in a district where the governing board has adopted a salary schedule for temporary employees of the district, the amount paid the temporary employee during any month shall be less than the salary due the employee absent from his or her duties.

When a person employed in an academic position is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due the person for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. These rules and regulations shall not conflict with rules and regulations of the board of governors. Nothing in this section shall be construed to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for academic employees.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

#### § 87781 (Sick Leave)

Every academic employee employed five days a week by a community college district shall be entitled to 10 days' leave of absence for illness or injury and any additional days in addition thereto that the governing board may allow for illness or injury, exclusive of all days he or she is not required to render service to the district, with full pay for a college year of service. An employee employed for less than five schooldays a week shall be entitled, for a college year of service, to that proportion of 10 days' leave of absence for illness or injury as

the number of days he or she is employed per week bears to five and is entitled to those additional days in addition thereto as the governing board may allow for illness or injury to certificated employees employed for less than five school days a week; pay for any day of those absences shall be the same as the pay that would have been received had the employee served during the day. Credit for leave of absence need not be accrued prior to taking leave by the employee and the leave of absence may be taken at any time during the college year. If the employee does not take the full amount of leave allowed in any school year under this section, the amount not taken shall be accumulated from year to year with additional days as the governing board may allow.

The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purposes of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefore by the practice of the religion of any well-recognized church or denomination.

Nothing in this section shall be deemed to modify or repeal any provision in Chapter 3 (commencing with Section 120175) of Part 1 of Division 105 of the Health and Safety Code.

Section 87780 does not apply to the first 10 days of absence on account of illness or accident of any employee employed five days a week or to the proportion of 10 days of absence to which the employee employed less than five days a week is entitled hereunder on account of illness or accident or to additional days granted by the governing board. Any employee shall have the right to utilize sick leave provided for in this section and the benefit provided by Section 87780 for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

#### **§ 87786 (50% Pay)**

Section 87780 shall not apply to any community college district which adopts and maintains in effect a rule which provides that when a person employed in an academic position is absent from his or her duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he or she shall receive 50 percent or more of his or her regular salary during the period of the absence and nothing in Section 87780 shall be construed as preventing the governing board of any district from adopting any such rule.

Notwithstanding the foregoing, when a person employed in an academic position is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. These rules and regulations shall not conflict with rules and regulations of the board of governors.

Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for academic employees.

This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

### § 87787 (Industrial Accident Leave)

Governing boards of community college districts shall provide by rules and regulations for industrial accident and illness leaves of absence for all academic employees. The governing board of any district which is created or whose boundaries or status is changed by an action to organize or reorganize districts completed after January 1, 1976, shall provide by rules and regulations for those leaves of absence on or before the date on which the organization or reorganization of the district becomes effective. The rules or regulations shall include all of the following provisions:

- 1) Allowable leave shall be for not less than 60 days during which the schools of the district are required to be in session or when the employee would otherwise have been performing work for the district in any one fiscal year for the same accident.
- 2) Allowable leave shall not be accumulated from year to year.
- 3) Industrial accident or illness leave shall commence on the first day of absence.
- 4) When an academic employee is absent from his or her duties on account of an industrial accident or illness, the employee shall be paid the portion of the salary due him or her for any month in which the absence occurs as, when added to his or her temporary disability indemnity under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, will result in a payment to the employee of not more than his or her full salary. The phrase “full salary”, as utilized in this subdivision, shall be computed so that it shall not be less than the employee’s “average weekly earnings” as that phrase is utilized in Section 4453 of the Labor Code. For purposes of this section, however, the maximum and minimum average weekly earnings set forth in Section 4453 of the Labor Code shall otherwise not be deemed applicable.
- 5) Industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award.
- 6) When an industrial accident or illness leave overlaps into the next fiscal year, the employee shall be entitled to only the amount of unused leave due him or her for the same illness or injury.

Upon termination of the industrial accident or illness leave, the employee shall be entitled to the benefits provided in Sections 87780, 87781 and 87786, and, for the purposes of each of these sections, his or her absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave. However, if the employee continues to receive temporary disability indemnity, he or she may elect to take as much of his or her accumulated sick leave which, when added to his or her temporary disability indemnity, will result in a payment to the employee of not more than his or her full salary.



The governing board, by rule or regulation, may provide for additional leave of absence for industrial accident or illness as it deems appropriate.

During any paid leave of absence, the employee may endorse to the district the temporary disability indemnity checks received on account of his or her industrial accident or illness. The district, in turn, shall issue the employee appropriate salary warrants for payment of the employee's salary and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by the salary warrants.

Any employee receiving benefits as a result of this section, during periods of injury or illness, shall remain within the State of California unless the governing board authorizes travel outside the state.

In the absence of rules and regulations adopted by the governing board pursuant to this section, an employee shall be entitled to industrial accident or illness leave as provided in this section but without limitation as to the number of days of leave.

### **Classified Leave of Absence**

#### **§ 88191 (Sick Leave)**

Every classified employee employed five days a week by a community college district shall be entitled to 12 days leave of absence for illness or injury and such additional days, in addition thereto, as the governing board may allow for illness or injury, exclusive of all days the employee is not required to render service to the district, with full pay for a fiscal year of service.

A classified employee, employed five days a week, who is employed for less than a full fiscal year, is entitled to that proportion of 12 days leave of absence for illness or injury as the number of months the employee is employed bears to 12 and the proportionate amount, consistent with this formula, of such additional days, in addition thereto, authorized by the governing board for classified employees employed five days a week for a full fiscal year of service.

A classified employee employed less than five days per week shall be entitled, for a fiscal year of service, to that proportion of 12 days leave of absence for illness or injury as the number of days the employee is employed per week bears to five and is entitled to the proportionate amount, consistent with this formula, of such additional days, in addition thereto, authorized by the governing board for classified employees employed five days a week for a full fiscal year of service.

When these persons are employed for less than a full fiscal year of service, this and the preceding paragraph shall determine that proportion of leave of absence for illness or injury to which they are entitled.

Pay for any day of such absence shall be the same as the pay which would have been received had the employee served during the day. Credit for leave of absence need not be

accrued prior to taking that leave by the employee and such leave of absence may be taken at anytime during the year. However, a new employee of a district shall not be eligible to take more than six days, or the proportionate amount to which the employee may be entitled under this section, until the first day of the calendar month after completion of six months of active service with the district.

If the employee does not take the full amount of leave allowed in any year under this section, the amount not taken shall be accumulated from year to year with such additional days as the governing board may allow.

The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purpose of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefore by the practice of the religion of any well-recognized religious sect, denomination or organization.

This section shall not apply to a district in which the full-time equivalent student of the district is in excess of 400,000, if the district maintains sick leave policies not less than those in effect in such districts on January 1, 1961.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

### **§ 88192 (Industrial Accident Leave, Sick Leave, Vacation, 39-month re-hire)**

Governing boards of community college districts shall provide, by rules and regulations, for industrial accident or illness leaves of absence for employees who are a part of the classified service. The governing board of any district that is created or whose boundaries or status is changed by an action to organize or reorganize districts completed after January 1, 1975, shall provide, by rules and regulations, for such leaves of absence on or before the date on which the organization or reorganization of the district becomes effective for all purposes.

The rules and regulations shall include all of the following provisions:

- 1) Allowable leave shall not be for less than 60 working days in any one fiscal year for the same accident.
- 2) Allowable leave shall not be accumulative from year to year.
- 3) Industrial accident or illness leave of absence will commence on the first day of absence.
- 4) Payment for wages lost on any day shall not, when added to an award granted the employee under the workers' compensation laws of this state, exceed the normal wage for the day.
- 5) Industrial accident leave will be reduced by one day for each day of authorized absence regardless of a compensation award made under workers' compensation.

- 6) When an industrial accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee shall be entitled to only that amount remaining at the end of the fiscal year in which the injury or illness occurred, for the same illness or injury.

The industrial accident or illness leave of absence is to be used in lieu of entitlement acquired under Section 88191. When entitlement to industrial accident or illness leave has been exhausted, entitlement to other sick leave will then be used; but if an employee is receiving workers' compensation, the person shall be entitled to use only so much of the person's accumulated or available sick leave, accumulated compensating time, vacation or other available leave which, when added to the workers' compensation award, provide for a full day's wage or salary.

The governing board, by rule or regulation, may provide for additional leave of absence, paid or unpaid, as it deems appropriate and during that leave the employee may return to the person's position without suffering any loss of status or benefits.

Periods of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee.

During all paid leaves of absence, whether industrial accident leave as provided in this section, sick leave, vacation, compensated time off or other available leave provided by law or the action of a governing board, the employee shall endorse to the district wage loss benefit checks received under the workers' compensation laws of this state. The district, in turn, shall issue the employee appropriate warrants for payment of wages or salary and shall deduct normal retirement and other authorized contributions. Reduction of entitlement to leave shall be made only in accordance with this section.

When all available leaves of absence, paid or unpaid, have been exhausted and if the employee is not medically able to assume the duties of the person's position, the person, if not placed in another position, shall be placed on a reemployment list for a period of 39 months. When available, during the 39-month period, the person shall be employed in a vacant position in the class of the person's previous assignment over all other available candidates except for are employment list established because of lack of work or lack of funds, in which case the person shall be listed in accordance with appropriate seniority regulations.

The governing board may require that an employee serve, or have served continuously, a specified period of time with the district before the benefits provided by this section are made available to the person. However, that period shall not exceed three years. All service of an employee prior to the effective date of this section shall be credited in determining compliance with the requirement.

An employee who has been placed on a reemployment list, as provided herein, who has been medically released for return to duty and who fails to accept an appropriate assignment shall be dismissed.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060).

**§ 88196 (Sub-Differential and 50% Pay)**

When a person employed in the classified service is absent from his or her duties on account of illness or accident for a period of five months or less, whether or not the absence arises out of or in the course of employment of the employee, the amount deducted from the salary due the employee for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill the employee's position during his or her absence.

Except in a district where the governing board has adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due the employee absent from the employee's duties.

Entitlement to sick leave provisions under this section, if any, shall be considered "entitlement to other sick leave" for the purposes of computing benefits under Section 88192 if the absence is for industrial accident or illness and shall be used after entitlement to all regular sick leave, accumulated compensating time, vacation or other available paid leave has been exhausted.

This section shall not apply to any community college district that adopts and maintains, in effect, a rule which provides that a regular classified employee shall be credited once a year with a total of not less than 100 working days of paid sick leave, including days to which he or she is entitled under Section 88191. These days of paid sick leave, in addition to those required by Section 88191, shall be compensated at not less than 50 percent of the employee's regular salary. The paid sick leave authorized under such a rule shall be exclusive of any other paid leave, holidays, vacation, or compensating time to which the employee may be entitled. Nothing in this section shall preclude the governing board from adopting such a rule.

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## 9. CASE LAW AND LEGAL INFORMATION

### Certificated

#### **California Teachers Association vs. Parlier USD (1984) 157 Cal.App.3d 174, 204 Cal. Rptr 20**

Clarifies that certificated employees begin receiving sub-differential pay after exhaustion of 10 days current sick leave. If the teacher has no unused sick time, there is no 10-day waiting period, sub-differential pay starts immediately after Industrial Accident Leave. The five school months commence after exhaustion of current sick time (or after Industrial Accident Leave if no current sick time).

#### **Jefferson Classroom Teacher Association vs. Jefferson Elementary School District (1982) 137 Cal. App.3d 993**

Teacher who has exhausted all regular sick leave pay and who is thereafter ill or injured is entitled to receive his or her differential leave benefits whether or not such illness or injury is continuous with the illness or injury which caused the teacher to exhaust the regular sick leave. CBA limiting extended disability pay to the same or continuous illness or injury is void.

#### **Lottie Lute vs. Governing Board of the Covina Valley Unified School District (1988) 202 Cal. App. 3d. 1177**

Holds that the five school months of Sub-Differential Pay begins after exhaustion of current sick leave and runs concurrently with accumulated sick leave. **Note:** *SB1019 amended this for 1/1/99 however SB1019 makes no reference to 50% Pay and therefore many attorneys rely on this case to support that the five months of 50% pay commences after current sick leave and concurrently with accumulated sick leave.*

#### **SB 1019 Amendments to Education Code Sections 44977 and 44978.1**

April 29, 1998 SB 1019 was passed by the Governor to amend 44977 and 44978.1 to specify that all current and accumulated sick leave must be exhausted before the five school months of sub-differential pay would commence. [Note that this made portions of Napa Valley Educators Association vs. Napa Valley Unified School District (1984) as well as Lute vs. Governing Board of Covina Valley Unified School District (1988) invalid.]

#### **AB 915 Amendments to Education Code Section 87787**

AB 915 was signed by the Governor and took effect on 1/1/16. The legislation removes the out of state travel restriction on employees receiving benefits as a result of an industrial accident or injury.

**Classified****53 Ops. Cal. Atty. Gen. 111 (1970)**

Five-month period for differential pay commences on the first day of sickness or illness. The five-month period is not extended by the 60 days of Industrial Accident Leave; it runs concurrently with it.

**CSEA vs. Colton Joint Unified School District Case No. E044388 January 26, 2009**

Under Ed Code Section 45196 a District may not run 100 days concurrently with accrued Vacation leave, even if parties agreed to such coordination through their collective bargaining agreements. *“The paid sick leave authorized under such a rule shall be exclusive of any other paid leave, holidays, vacation, or compensating time to which the employee may be entitled.”*

The case involved a classified employee (a bus driver) who injured her knee on the job. From May 12, 2005, through July 16, 2006, she received workers' compensation benefits amounting to two-thirds her regular pay. The collective bargaining agreement between the District and CSEA contained provisions designed to coordinate the various leaves available to sick or injured classified employees in order to keep them in full-pay status as long as possible. For the first 60 days after her injury, Haynes received industrial and illness leave under Education Code section 45192. The collective bargaining agreement then entitled her to receive her accrued sick leave, followed by her vacation leave, and augmented by her differential leave.

Between September and December 2005, Haynes was absent for 67 days. Haynes assigned her workers' compensation benefits of two-thirds of her pay to the District, the District deducted one-third of a day of Haynes' accrued vacation, and then paid her for one full day. (Haynes had no accrued sick leave.)

Although the parties disagreed about deductions made for six days of the December 2005 winter break, the court found that Haynes had received two-thirds of her pay in workers' compensation benefits, which she assigned to the District, and the District deducted one full vacation day and one day of differential leave. This meant that the District charged Haynes the equivalent of two days of leave while paying her for one day. The District's explanation was that it was following the collective bargaining agreement, which provided that the District could "coordinate" leave deductions in order to ensure that an employee received full pay for as long as possible.

CSEA argued that while the District properly deducted sick leave and differential leave concurrently, the District could not deduct vacation leave and differential leave concurrently. The Court of Appeal agreed. The Court explained that under section 45196 (authorizing the 100-day rule) and section 45191 (providing 12 days of annual sick leave for full-time classified employees), Haynes was entitled to at least 100 days of differential leave, offset by any accrued sick leave. However, section 45196 expressly defines differential leave as exclusive of vacation leave. Although the collective bargaining agreement supported the

District's interpretation, the Court held that Haynes's statutory rights as a classified employee prevailed over the provisions of the collective bargaining agreement.

### **CSEA vs. Tustin Unified School District February 27, 2007**

When a classified school district employee is on disability leave for five months or less, the employer school district may not, under Education Code section 45196, deduct from the absent employee's salary an amount exceeding the sum “actually paid a substitute employee employed to fill his position during his absence.” (Ed. Code, § 45196.) As an alternative, the school district may maintain a policy of crediting regular classified employees with 100 days of sick leave at 50% additional working days per year of paid sick leave. (§ 45196.)

To cover for a classified transportation employee using sub differential, the district assigned a current classified employee who was a limited hour food service worker and they paid her extra for the additional hours she worked. The court ruled that the district could not deduct the cost of the classified district employee covering for the employee on leave because the "sub" was not from outside the district. When replacing a classified employee using sub differential, the District must engage a substitute from outside the district; otherwise the district cannot do a differential pay dock for the classified employee. This is true even if the district pays the current classified employee extra and even if the district backfills all or part of that position with a sub from outside the district. The sub must be hired specifically to perform the duties of the employee who is on leave in order to do sub deduct.

Ed. Code Section 45103(d) As used in this section: “Substitute employee” means *a person employed to replace a classified employee who is temporarily absent from duty*. In addition, if the school district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board of the school district may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

Section 45196 provides, in part: *“When a person employed in the classified service is absent from his duties on account of illness or accident for a period of five months or less, whether or not the absence arises out of or in the course of employment of the employee, the amount deducted from the salary due him for any month in which the absence occurs shall not exceed the sum which is **actually paid a substitute employee employed to fill his position during his absence.**”*

Under the Ed. Code and CSEA vs. Tustin Unified, the term substitute in this context does NOT include a current classified employee of the district who may be “assigned” to perform the duties of the position for the employee on differential leave.

The court **concluded that “employ” is synonymous with “hire.”** The word “employ” **does not mean “to use” or “to assign.”** The Education Code uses the word “assign” specifically to refer to the situation where an existing employee is given a **particular task**. For example, section 45102, subdivision (b) states, “[i]f, during a school year, it is necessary to assign a regular classified employee to perform an assignment or service in addition to his or her regular assignment, a school district shall pay the classified employee on a pro rata basis for the additional assignment or service.” In contrast, the Education Code uses the word “employ” in situations where it means “hire.” If the school

district assigns the absent employee's tasks to an employee who was hired for a purpose other than to fill the absent employee's position, then section 45196 does not permit the district to deduct that employee's pay from the absent employee's salary.

### **Veguez vs. Long Beach Unified School District (2005)**

Placement on the 39-month reemployment list is not a dismissal or layoff of a certificated employee from the District. A certificated employee placed on a reemployment list pursuant to section 44978.1 remains an employee of the school district throughout the 39-month

period. Felicijan v. Santa Ana Educators Association, (PERB Decision No. 2008, March 10, 2009). Section 44978.1 provides that when a certificated employee has exhausted all available sick leave, but “is not medically able to resume the duties of his or her position, the employee shall, if not placed in another position, be placed on a reemployment list for a period of 24 months if the employee is on probationary status, or for a period of 39 months if the employee is on permanent status.” PERB held that the legislative history of section 44978.1 “contains nothing to indicate the Legislature intended placement on the 39-month reemployment list to end the employment relationship between the certificated employee and the school district.” Petitioner is still an employee of the District.

### **Other Pertinent Cases**

#### **Herrera vs. WCAB/Goleta Lemon Association (1969)**

Affirms that employees who receive full salary from their employers are not also entitled to temporary disability payments. To avoid double recovery, the employer is entitled to a lien (or receipt of) the temporary disability as an offset for providing full wages during the disability period.

#### **Mt. Diablo USD v WCAB (Rollick) (2008) 2008 Cal. App. LEXIS 1222**

The Appellate court determined that benefits provided under Education Code Section 44043 constitute temporary disability benefits and are part of the applicant's two-year window of temporary total disability benefits. These benefits are included applicant's TTD benefit and therefore are to be counted toward the two- year/104-week payment limitation under Labor Code § 4656(C)(1).

#### **Marisa Hernandez v. Rancho Santiago Community College District Decided: May 03, 2018**

This case focuses on a claim of disability discrimination and failure to reasonably accommodate with extended leave under the California Fair Employment & Housing Act (FEHA) and is not a “workers’ compensation” case. The employee was on an authorized workers’ compensation leave for surgery and recovery, when her probationary period was supposed to end. The District released her and defended against the discrimination claim by arguing that the Education Code absolutely required that she be released prior to the end of the probationary period, or she would automatically become permanent. The court disagreed.



Education Code Section 88013 does not require an employer to either terminate an employee or make the employee a permanent employee on the hiring anniversary date when the employee is on approved leave for an extended period of time during the probationary period.

The court also held that Education Code section 88013, subdivision (a), did not require the district to either terminate Hernandez's employment or make her a permanent employee on the anniversary date of her hiring. The court concluded the district could have deducted from Hernandez's probationary period the extended period of time she was away from work due to her work-related injury. This would have allowed the district to receive the full 12-month period of time in which to evaluate the employee's performance.

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## 10. KEY TERMS AND DEFINITIONS

**AB/SB:** Abbreviation for Assembly Bills (AB) and Senate Bills (SB). These are followed by the number designation such as SB1019.

**Academic Employee:** A person employed by a community college district who holds a certification qualifying them to engage in the designated service such as teaching.

**Academic Year:** The period between the first day of a full semester or quarter and the last day of the following spring semester or quarter.

### **Administrators:**

- Superintendent of Schools – Appointed by the board to lead the district. May serve as Secretary to the board’s spokesman. Most often his/her recommendations are approved by the Board.
- Assistant Superintendent of Business (or Business Manager) – Appointed on a contract by the Board.
- Assistant Superintendent of Personnel – May have one for classified and one for certificated personnel. Usually involved in negotiations with employees regarding salary and fringe benefit issues.

**Bargaining Units:** Beginning July 1, 1978, school district employees were permitted to form bargaining units to negotiate labor contracts with their districts. Generally, certificated (teachers) are in one unit and classifieds in another. Large districts may have two or three different classified bargaining units. Supervisory and confidential personnel are not represented in a bargaining unit.

**Board of Education:** Each district is run by an elected board of citizens (usually unpaid). They normally meet every two weeks. The final decision on all school matters is made at board meetings. The superintendent and staff attend all board meetings. Usually the board follows the superintendent’s recommendations. The board hires the superintendent and key staff members on a contract basis.

**California State Department of Education:** The State Superintendent of Schools is elected by popular vote for a four-year term of office. This department is responsible for establishment of statewide laws.

**Certificated Employee:** A person who holds one or more documents such as a certificate, a credential, or a life diploma, which singly or in combination license the holder to engage in the school service designated in the document or documents. Examples include teachers and certain administrators such as principals.

**Classified Employee:** Those employees not performing teaching jobs. Examples include secretaries, custodians and maintenance workers.

**Confidential Employees:** Classified employees working in confidential positions pertaining to district negotiations. These employees do not have the right to negotiate for salaries or fringe benefits. They may make a proposal to the board and the proposal is either accepted or denied. Some districts grant salary increases additional vacation days or additional fringe benefits to these employees to compensate of the loss of bargaining rights.

**County Counsel:** Attorneys assigned by the county to act as attorneys for a particular school district. County counsel provides counseling and defense in all legal actions.

**County Department of Education:** Each county has a county superintendent of education and staff to assist districts within that county. This intermediate agency provides direct services to school districts.

**CSEA (California School Employees' Association):** A union comprised of classified school employees.

**CTA (California Teachers' Association):** A union comprised of certificated school employees. Most districts form their own local branches.

**Differential Pay (Sub-Difference Pay):** After all industrial leave and/or sick leave benefits have been paid; employees are entitled to the difference between their regular salary and that of a substitute for a five-month period. Many districts have negotiated 50% pay for employees in lieu of the differential pay.

**District:** Political and geographic unit that elects a 3-7 person Board of Education to run the school system. Type of districts:

- 1) Elementary District – Provides education from kindergarten through 8th grades (K-8).
- 2) High School District – Provides education from 9th through 12th grades.
  - Continuation High School – Special high school for special situation students (last chance, wards of courts, pregnant teenagers, etc.).
  - Adult Education – Part of high school. Provides special education for adults.
- 3) Unified School District – Provides education for K through 12 (a combination of elementary and high school districts).
- 4) Regional Occupational Centers – Provides “saleable” skill training to high school level students and adults. Usually several districts combine to establish such a center and representatives from the various boards of education serve on the board of the center.
- 5) Joint District – May be elementary, high or unified, but crosses county lines to make up its geographic boundaries.
- 6) Junior College (Community College) – Provides 13th - 14th years of education to any applicant. Usually serves several school districts.

- 7) State College and University System – Run by state through elected and/or appointed regents to provide higher education to qualified individuals.

**EERA (Educational Employment Relations Act):** Government Code section 3543.2 that makes the issue of employee leaves of absence a mandatory subject of negotiation.

**Faculty Member:** Employees of a community college district who are employed in a non supervisory or management position such as instructors, librarians, counselors, etc.

**Fair Employment House Act (FEHA):** California Law regarding the accommodation process for employees with disabilities (refer to FEHA Toolkit available on PC Bridge, Keenan U tab).

**Fiscal Year:** Period from July 1<sup>st</sup> to, and including, June 30<sup>th</sup>.

**IA – Industrial Absence (60-day Salary Continuance):** The Education Code provides that all permanent employees are entitled to a minimum of 60 days full salary when injured on the job. Many districts have negotiated more than 60 days.

**Management Team:** Administrators and top-level supervisors working in a management capacity. These employees do not have the right to negotiate for salaries or fringe benefits. They may make a proposal to the board and the proposal is either accepted or denied.

**Merit System:** Many districts in California are Merit System Districts. This is very similar to civil service. All prospective employees are placed on eligibility lists according to proficiency in written tests, skill tests and oral interviews. The immediate supervisor then makes the selection from the top three candidates. Classified employment in Merit System Districts is governed by the Personnel Commission. The Personnel Commission approves all classified personnel proceedings.

**P.E.R.B. (Public Employment Relations Board):** Hears disputes between bargaining units and school district employees.

**Permanent Part-Time:** Some employees work a short day on a permanent basis. This includes certain cafeteria workers, bus drivers, custodians, etc. Most districts provide fringe benefits for permanent part-time employees working at least 20 hours per week.

**Probationary-Certificated:** Certificated employees must serve a six-month probationary period.

**Retirement:**

- P.E.R.S. (Public Employees Retirement System) – For classified employees. Requires contribution from district and employee.
- S.T.R.S. (State Teachers’ Retirement System) – For certificated employees. Contributions by districts and employees provide the funds for eventual retirement. The district contributions are increased to 8% over several years while the current employee contribution has been established at 8%.

**RHODDA Act:** Changed ‘meet and confer’ labor relations to allow bargaining unit to negotiate labor contracts. Effective July 1, 1976.

**Salaries-Certificated:** All certificated salaries are paid on an annual contract basis. Teachers may choose whether to receive this pay in 10 or 12 equal installments. If 10 is chosen, no warrant is received in August or September. Districts usually encourage 12-month pay because the money retained by the districts to make the August and September payments earns interest for the district.

**Salaries-Classified:** Most full-time classified employees are paid a monthly salary. Part-time employees (instructional aides, noon duty aides, and food service workers) are paid an hourly rate.

**School Year:** The school year begins on the first day of July and ends on the last day of June.

**School Month:** 20 days or four weeks of five days each, including legal holidays.

**Tenure:** For districts with ADA 250 or greater, a teacher receives tenure after two complete consecutive years. For districts with ADA less than 250, a teacher receives tenure after three complete and consecutive years. It is difficult to terminate a teacher. However, this may occur for reasons such as unsatisfactory performance, unprofessional conduct, or drug. Tenure teachers may be laid off due to declining enrollment or budgetary cuts, but only after all probationary employees have been laid off, if notified by March 15th of the preceding year.

**Vacation Pay:** Only Classified employees of a district get vacation pay as defined in their labor contract. No teacher gets vacation pay.

**Volunteer:** Labor Code Section 3364.5 states: Notwithstanding Section 3351 of the Labor Code, a volunteer, unsalaried person authorized by the governing board of a school district or the county superintendent of schools to perform volunteer services for the school district or the county superintendent shall, upon the adoption of a resolution of the governing board of the school district or the county board of education so declaring, be deemed an employee of the district or the county superintendent for the purposes of this division and shall be entitled to the workers’ compensation benefits provided by this division for any injury sustained by him(her) while engaged in the performance of any service under the direction and control of the governing board of the school district or the county superintendent. Please note the following findings: **The California 1st District Court of Appeal ruled that volunteer Michelle Salazar's exclusive remedy was the workers’ compensation system in Salazar v. Livermore Valley Joint Unified School District, No. A116635, 3/4/08.**

Although most volunteer workers are covered under workers’ compensation, please confer with your supervisor regarding coverage issues for volunteers, as contracts differ with all clients.

**Vouchers:** A “receipt” sent to self-insured Districts to document a credit for temporary disability (TD), permanent disability (PD) or vocational rehabilitation maintenance allowance (VRMA). It is used by District’s who are continuing full salary to offset their records for the benefit payment due under the Labor Code.

**Warrants – Checks:** The only warrants that can be issued directly by a district are on revolving funds (petty cash). All other warrants and payroll warrants are issued by the County Department of Education.

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## 10. Industrial Injury Lost Time Quick Guide

### Industrial Accident Leave

EC § 87787

39 Month Re-Employment List
Other Leave Provisions
Sub-Differential or 50% Pay
Sick/Vacation
<b>Industrial Accident Leave</b>

- Minimum of 60 working days
- Only one period per injury
- Generally, one day of IAL is provided for each day of authorized absence
- Employee receives full salary

### Sub-Differential Pay

EC § 87780

39 Month Re-Employment List
Other Leave Provisions
<b>Sub-Differential</b> or 50% Pay
Sick/Vacation
Industrial Accident Leave

- Difference between the employee’s average weekly wage and amount paid a substitute
- Combination of sub-differential leave and temporary disability shall not exceed average weekly wage
- TTD is paid to employee when sub-differential & TTD are less than full wages
- TTD paid to district when sub-differential & TTD are greater than full wages

### Sick and Vacation Leaves

EC § 87781, 87787

39 Month Re-Employment List
Other Leave Provisions
Sub-Differential or 50% Pay
<b>Sick/Vacation</b>
Industrial Accident Leave

- Is not used until IAL is exhausted
- Days are pro-rated in coordination with temporary disability
- Sick/Vacation continues to accumulate
- Combination of sick/vacation leaves and temporary disability shall not exceed average weekly wage

### 50% Pay

EC § 87786

39 Month Re-Employment List
Other Leave Provisions
Vacation
Sub-Differential or <b>50% Pay</b>
Sick
Industrial Accident Leave

- Paid in lieu of sub-differential when collectively bargained or adopted by the governing board
- **Classified:** 50% Pay falls between use of all sick leave (current & accumulated) and accumulated vacation
- **Certificated:** Accumulated sick leave and 50% Pay run consecutive

**Other Leave Provisions**

EC § 87045

39 Month Re-Employment List
<b>Other Leave Provisions</b>
Sub-Differential or 50% Pay
Sick/Vacation
Industrial Accident Leave

- Does collective bargaining agreement provide additional leaves, donated or comp time?
- Combination of “other” leave and temporary disability shall not exceed average weekly wage

**39 Month Re-Employment List**

EC § 88192

<b>39 Month Re-Employment List</b>
Other Leave Provisions
Sub-Differential or 50% Pay
Sick/Vacation
Industrial Accident Leave

- Ed Code requires that all available leave be exhausted before placing disabled employee on list
- Employee receives TTD direct without employer coordination

**Certificated**

Sub- Diff Method	50% Method
The five-school month period for Difference pay commences once IAL, Current Year’s Sick Leave and Accumulated Sick Leave are exhausted.	The 50% five-school months period runs <b><i>concurrently</i></b> with Accumulated Sick Leave. Employee receives 50% pay only after Accumulated Sick Leave is exhausted.

**Classified**

Sub- Diff Method	50% Method
The five-month period for Difference pay commences with the first day of disability and is <b><i>not</i></b> extended by the 60-day’s Industrial Accident Leave; it runs <b><i>concurrently</i></b> .	The 100 working days run concurrently with Current and Accumulated Sick Leave. If available, Vacation & other paid leaves may be used when the 100 days exhausts.



## 12. KEENAN & ASSOCIATES CONTACT INFORMATION

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