

The Absent Educator: Rules Regarding Sick Leave

By Matthew Pence, PAGE Staff Attorney

Almost daily, PAGE in-house attorneys answer questions regarding leave. The inquiries range from simple questions, such as calling in sick for one day or taking a personal day, to complex questions, such as utilizing long-term medical leave. Educators need to be aware of leave laws and rules, as utilizing leave is a combination of state and federal laws, local policies and procedures, and, in some circumstances, contract.

STATE SICK LEAVE

The Georgia statute governing school system personnel sick leave (O.C.G.A. § 20-2-850) requires that educators receive 1.25 working days of sick leave for each completed contract month. Thus, most school system employees receive 12 sick leave days per year. To utilize a sick day, the absence must be due to either personal illness, illness in the immediate family or for a death in the immediate family. The statute does not define immediate family, so check your local policy. Otherwise, it is safe for educators to assume that “immediate family” encompasses, at least, a spouse, child, parent and/or sibling.

State law is silent on the procedures for using sick days, so local school systems address these issues. Educators often ask

whether they must have a sick note for being out for one day. Without the school system requiring a doctor’s note (either through policy, contract or an administrator’s directive), the answer is most often “no.” While a note is usually only required if an educator is out for several consecutive days or if the educator has excessive absences, check local policies and procedures. Because school systems always reserve the right to ask for a doctor’s note, it remains best practice to assume that one will be required for any sick day.

Unused sick leave accumulates from year to year. If an educator leaves a school system to take a job in another district, then no more than 45 days of his/her accumulated sick leave will transfer. At retirement, if an educator has at least 60 accumulated sick days, he/she may receive service credit with the Teachers Retirement System for those days. This includes any sick days “left behind” when transferring from one district to another.

LEAVE FOR THE ASSAULTED EDUCATOR

State law specifically exempts docking sick leave or pay from an educator who must utilize leave because he/she has been physically assaulted in the course of his or her duties. This exemption only applies

to the first seven days that the educator is absent due to the physical assault. As these attacks are injuries during the course of employment, an educator who has been physically assaulted in the course of his or her duties should follow the workers’ compensation protocol in terms of notifying the district and pursuing treatment under the district’s workers’ compensation insurance. Protecting accumulated leave under this law does not require the educator to pursue criminal charges against the assailant.

WORKERS’ COMPENSATION

When an employee suffers an on-the-job injury, he or she must utilize the employer’s workers’ compensation insurance. For the first seven days following the on-the-job injury, an employer may dock sick leave from the employee’s accumulated leave. After that, the employee qualifies for workers’ compensation income benefits.

PERSONAL LEAVE

Each school year, educators may use up to three sick days as personal days. The use of personal leave is dictated by local policy. Generally, these policies mandate that personal leave cannot be used on a “critical day” (pre-planning, post-planning, a day before or after a holiday or during testing) and that authorization is required in advance. Whereas unused sick leave days accumulate, personal days do not. In short, an educator who uses no personal leave days during one school year will not be allowed to use more than three in the following school year or years.

FAMILY AND MEDICAL LEAVE ACT

Family and Medical Leave Act (FMLA) is a federal law that allows an employee to take up to 12 weeks of leave in one year for an illness or the illness of an immediate family member. For purposes of the FMLA, “illness” means

Educators often ask if they need a sick note for missing a day of work. Without the school system requiring a doctor’s note (either through policy, contract or an administrator’s directive), the answer is most often ‘no.’ But because school systems reserve the right to ask for a doctor’s note, it is best practice to assume that one will be required for any sick day.

a serious health condition or the birth or adoption of a child. "Immediate family member" is specifically defined as a spouse, child or parent. It is imperative that educators remember that FMLA is unpaid leave, but an educator may use his or her accumulated sick leave as FMLA in order to continue to receive a salary. School systems are allowed to determine when the year will begin for purposes of FMLA. Some districts in Georgia set this date as Jan. 1, while others set it as July 1. Another option is the rolling calendar at the first day of designated FMLA leave.

Unlike use of state sick leave, FMLA has a very important threshold that must be satisfied before an employee may exercise rights: The employee must have been in a full-time position for one calendar year. This is defined by the FMLA as one who worked at least 1,250 hours for the employer in the past 12 months.

An educator wishing to utilize individual rights under FMLA must first get an FMLA packet from the board office. Generally, these packets require medical documentation and/or opinions from the educator's doctor. Many districts require that the doctor specifically recommend that medical leave is the appropriate course of conduct. The educator should have this paperwork completed as soon as possible. It should then be submitted to the board office where a determination of approval will be made.

Educators must also become familiar with intermittent FMLA. Under this options, an employee utilizes FMLA, but only on sporadic dates. In short, instead of using the 12 allotted weeks in one specific time period, the educator uses allowed leave in intermittent dates. An educator wishing to utilize intermittent FMLA would still be required to submit paperwork to the employing district to request leave.

LEAVE FOR THE EDUCATOR IN COURT

There are three common scenarios where an educator is expected to appear in court: to provide testimony related to his or her duties as an educator; to provide testimony for a matter not related to his or her duties as an educator; or to

The most common ethical issue concerning use of leave is submitting falsified documents for sick leave or the Family and Medical Leave Act. The Professional Standards Commission will usually issue sanctions ranging from a reprimand to a 90-day suspension of the educator's teaching certificate.

serve on a jury. An educator who must be absent to provide testimony related to his or her duties as an educator or to serve as a juror will not be deducted leave or pay (per O.C.G.A. § 20-2-870). For all other matters, such as providing testimony for a matter not related to his or her duties as an educator, a district may deduct days from accumulated leave.

LEAVE AND THE PROFESSIONAL STANDARDS COMMISSION

The most common ethical issue concerning use of leave is submitting

falsified documents for sick leave or FMLA. The Professional Standards Commission holds that this is unethical conduct under Standard 4 (Honesty) of the Code of Ethics for Georgia Educators. Depending on the facts and circumstances, the commission will usually issue sanctions ranging from a reprimand to a 90-day suspension of the educator's teaching certificate.

For questions regarding leave issues, please call the PAGE Legal Department at 800-334-68612 to speak to an in-house attorney. ■



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