

FROM: Glenn Rothner & Hannah Weinstein (Legal Counsel to CFT)  
TO: California Federation of Teachers Leaders  
DATE: August 14, 2020  
RE: Questions Concerning Sick Leave and Paid Leave Rights in Light of COVID-19  
**UPDATED AUGUST 2020**

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### **Introduction**

This memorandum updates a previous document addressing the paid and unpaid leave that CFT members may be entitled to during the COVID-19 crisis as well as the authority that gives employers the option of providing paid leave beyond their current obligations.

### **Paid and Unpaid Sick Leave Rights of Employees of School Districts and Community College Districts**

#### ***Paid Sick Leave Available to Employees Who Are Ill with COVID-19 or Under Recommendations of Quarantine: Already-Existing Law***

Law that was in place prior to the COVID-19 pandemic already provided for a certain amount of paid sick leave for certificated employees and classified employees of school districts, and for academic and classified employees of community college districts.

These leaves are available for employees to use if employees become infected with COVID-19 and/or if they are advised to self-quarantine in light of the COVID-19 outbreak. All of these leaves are available to employees whether or not employers close their workplaces, and whether or not locals are able to bargain for increased paid leave (discussed more below). These paid leaves are the floor required by the Education Code; and a local's collective bargaining agreements may provide for more paid leave due to illness than what the statutes require. We recommend checking collective bargaining agreements to determine if they provide for greater paid leave for illness than what is described in this section.

Full-time certificated employees of school districts are entitled to ten (10) paid sick days a year, and part-time certificated employees are entitled to a prorated number of paid sick days. Ed. Code § 44978. If a certificated employee has exhausted her paid sick leave days (including any accrued from prior years) and still needs to be absent due to her illness, she is entitled to differential pay for a period of five school months. Ed. Code § 44977(a). That five-month period can extend from the end of one school year to the next. Ed. Code § 44977(b)(2).

Full-time classified employees of school districts are entitled to twelve (12) paid sick days a year, and part-time classified employees are entitled to a prorated number of paid sick days. Ed. Code § 45191. If a classified employee has exhausted her paid sick leave days and all other paid leave, and still is absent due to illness, she is entitled to differential pay for five months. Ed. Code § 45196.

Academic employees of community college districts are entitled to ten (10) paid sick days a year, and part-time academic employees are entitled to a prorated number of paid sick days. Ed. Code § 87781(a). Academic employees are also entitled to differential pay for a period of five school months. Ed. Code § 87780.

Classified employees of community college districts are entitled to twelve (12) paid sick days a year, and part-time classified employees are entitled to a prorated number of paid sick days. Ed. Code § 88191. If a classified employee has exhausted her paid sick leave days and all other paid leave, and still is absent due to illness, she is entitled to differential pay for five months. Ed. Code § 88196.

### *Sick Leave Under Federal Legislation Passed in Response to the COVID-19 Pandemic*

In March 2020, the U.S. Congress passed the Families First Coronavirus Response Act (“FFCRA”), which provides for two types of leave specific to the COVID-19 pandemic: two weeks of emergency paid sick leave, and up to twelve weeks of paid expanded family and medical leave. This leave is available to employees to use until December 31, 2020.

Under the FFCRA, an employee is entitled to two (2) weeks (or, for a part-time employee, a prorated amount) of paid leave under certain circumstances, which include if the employee:

- is under a state or local quarantine/isolation order,
- has been advised by a healthcare provider to self-quarantine,
- is experiencing COVID-19 symptoms and is seeking a diagnosis,
- is caring for someone on the advice of a medical provider, and
- is caring for his/her child whose school is closed or whose childcare provider is closed/unavailable.

This leave may be used prior to any other paid leave that an employee is entitled to, and employer cannot require employees to use other paid leave first, nor can an employer change its existing paid leave policies to avoid this requirement. However, there is a cap on the pay for this leave of \$511/day; and if the employee is using the leave to care for someone else, the leave is paid at 2/3 of the employee’s regular pay and is capped at \$200/day. This pay can be supplemented via other paid leave the employee is eligible, if the employee and employer agree.

In addition, the FFCRA provides for partially-paid family and medical leave related to COVID-19 for up to twelve (12) weeks. This leave is available to those employed for at least thirty (30) days who cannot work because they need to care for their child whose school or place of care is closed on the basis of a state or local order. The first ten (10) days of this leave is unpaid (but the employee can use other paid leave available to obtain pay for this period, including the other FFCRA leave described above), and for the remainder of the twelve (12) weeks, the employee is entitled to 2/3 of his or her regular pay capped at \$200/day and at \$10,000 in total.

### Other Leave Available to Care for Others: Already-Existing Law

In addition to the leave explicitly described by the FFCRA as available when an employee is caring for others, laws in place prior to the COVID-19 pandemic allow for employees to take paid and unpaid time to care for family members.

Certificated and academic employees may use six (6) or seven (7) of their own paid sick days to care for an ill family member. *See* Ed. Code §§ 44981 (seven days for certificated employees); 87784 (six days for academic employees of community college districts). In addition, employers have the ability under the Education Code to allow classified employees to use seven (7) of their own paid sick days to care for an ill family member. *See* Ed. Code §§ 45207(a)(4), 45207(b), 88207(a)(4), 88207(b). We recommend that locals immediately request that employers invoke this power and allow classified employees to use seven of their own paid sick days to care for family members under quarantine.

Employees are also entitled to twelve (12) weeks of unpaid leave under the California Family Rights Act when they need to care for a family member with a serious health condition. Gov't Code § 12945.2. Employers may require, or employees may choose, for the employees to use other accrued paid leave during these twelve weeks, such as accrued vacation leave or other paid personal leave described in a collective bargaining agreement. Gov't Code § 12945.2(e).

The leaves described in this section are only available when an employee is caring for someone with COVID-19 or another serious health condition. They are not available because an employee is caring for a child whose school or childcare provider is fully or partially closed.

### Options for Higher-Risk Employees with Underlying Medical Conditions

If an employee has an underlying medical condition that makes her especially vulnerable to the effects of COVID-19, she is entitled to use whichever appropriate leave described above to take paid time off work.

In the alternative, or in addition, an employee with an underlying medical condition (even if not currently symptomatic) may want to assert that the underlying condition is a “disability” that limits a major life activity. As a disabled individual, this employee is entitled to the protections of the Fair Employment and Housing Act, Government Code § 12900 *et seq.* Under this law, an employee can immediately request an accommodation in light of her underlying medical condition and vulnerability to COVID-19, and her employer is obligated to engage in the interactive process with her to discuss possible accommodations. *See* Gov't Code §§ 12940(m), 12940(n). As examples, accommodations may consist of teaching remotely, performing administrative paperwork or other appropriate duties remotely or in isolation on campus, and/or moving to an office that is isolated from the public and other employees.

If an employer does not grant an employee with an underlying condition an accommodation that allows her to work safely remotely or in relative isolation, and if the employee exhausts all of the paid leave described in the previous section, then the employee can request additional paid or unpaid leave as the appropriate accommodation. 2 Cal. Code of Regulations § 11068(c).

Workers' Compensation: Leave Related to

Finally, if employees become infected *at work* with COVID-19, they may be entitled to workers' compensation. These claims should be considered on a case-by-case basis, and we recommend that employees contact their union leaders if they believe they are eligible for workers' compensation. Employees are generally entitled to at least 60 days of full pay if they successfully make a claim for workers' compensation. *See* Ed. Code §§ 44984 (certificated employees of school districts); 45192 (classified employees of school districts); 87787 (academic employees of community college districts); 88192 (classified employees of community college districts).

The California Legislature is currently considering A.B. 196, which would create the presumption that most essential workers (including those at educational institutions) who contracted COVID-19 after March 1, 2020 are entitled to workers compensation for the duration of their illness. CFT is following the status of this legislation, and will keep locals informed as to how, if passed, this legislation may help represented employees.

**Employers' Ability Under the Education Code  
to Provide Further Paid Sick Leave in Response to COVID-19**

Beyond the leaves described above that are currently available to all employees, the Education Code also *allows* employers to provide greater periods of paid leave whenever an employee is compelled to be absent because of her own illness or a quarantine. *See* Ed. Code §§ 44964 (for certificated employees of school districts); 45199 (for non-certificated employees of school districts); 87765 (for academic employees of community college districts); 88199 (for nonacademic employees of community college districts).

There are also Education Code provisions allowing boards of school districts and community colleges to provide greater periods of paid leaves of absence to employees, regardless of the reason for the leave. *See* Ed. Code §§ 44962-63 (for certificated employees of school districts); 45190 (for classified employees of school districts); 45198 (same); 87763-64 (for academic employees of community college districts); 88190 (for classified employees of community college districts); 88198 (same).

Accordingly, we strongly recommend that locals proactively lobby their governing boards to commit to providing paid leaves of absence beyond their current obligations to any employees who become sick with COVID-19, who are advised to self-quarantine, who have underlying medical conditions or are otherwise especially vulnerable to the effects of COVID-19, who are

providing care to others under quarantine or to children whose childcare or school sites are fully or partially closed, and whose worksite is closed.

### **Conclusion**

The COVID-19 outbreak is a unique and evolving situation. Novel questions regarding paid leave may arise; and the Legislature may continue passing emergency legislation concerning employees' rights in light of this epidemic. CFT is keeping track of developments and will share any new information. Please do not hesitate to contact your CFT leaders if you have questions not addressed in this memorandum.