



EDUCATION CODE BENEFITS

FALK & HAMBLIN

Attorneys at Law

14772 Plaza Drive, Suite 100

Tustin, California 92780

(714) 647-9444

Fax: (714) 647-9001



Analysis of Workers' Compensation Benefits for School District Employees Pursuant to the Education Code

■ Introduction

- Education Code for the State of California
- Recognizes two classes of employees
- Certificated employees (requiring State accreditation)
- Classified employees (typically non-teaching positions)



Analysis of Workers' Compensation Benefits for School District Employees Pursuant to the Education Code

Definitions

- **Classified Employee**
 - Designated title
 - Regular minimum number of assigned hours
 - Specific statement of duties
- **Permanent Classified Employee**
 - Passed the required probationary period
- **Regular Classified Employee**
 - Permanent or probationary classified employee
- **Certificated Employee**
 - One who holds one or more documents such as a certificate, credential, or like diploma which licenses the holder to engage in the school service
- **School Month**
 - 20 days or four weeks of five days each including legal holidays
- **School Year**
 - Begins on the first day of July and ends the last day of June
- **Fiscal Year**
 - From July 1st to and including the following June 30th
- **Community College Districts**
 - An academic position—service for which minimum qualifications have been established by the Board of Governors. (EC §8700(b))



Discussion of the Rights of K-12 Certificated Employees Regarding Leave of Absence

- **Certificated Employees—Injured at Work**
 - **Not less than 60 days of industrial accident or illness leave**
 - **Must be during which the schools are in session or would otherwise have been performing work**
 - **60 days begins running on the first day of absence, not subject to the Labor Code three day waiting period**
 - **Only one 60-day period for each injury or industrial illness**
 - **60 day leave reduced by one day for each day of authorized absence**



Discussion of the Rights of K-12 Certificated Employees Regarding Leave of Absence

Payment

- Shall be paid such portion of the salary due as when added to industrial temporary disability will result in payment of not more than full salary
 - The 60-day period is not “pro-rated” with temporary disability such as to extend the 60 days
 - Temporary disability will normally be paid directly to the school district
- then*
- Certificated has now been absent more than 60 days
 - Full salary consisting of industrial temporary disability, augmented with pro-rated, 10 days current sick leave and accumulated sick leave
 - Provide a full days’ pay



Discussion of the Rights of K-12 Certificated Employees Regarding Leave of Absence

Payment

- After certificated employees have exhausted pro-rated sick leave – two options:
 - Sub-differential pay—for five school months
- OR
- May receive 50% regular salary for five school months
- For districts allowing 50% pay the benefits now runs consecutively after all sick pay
- Entitled to only one five school month period of sub-differential pay for each accident or illness
- The law is somewhat unclear as to whether districts paying 50%--must provide a new five school month package of benefits if the disability extends into a new fiscal year



Discussion of the Rights of K-12 Certificated Employees Regarding Leave of Absence

39-Month Re-Employment List

- Employee has exhausted all available leaves (paid or unpaid) and is not medically able to resume the duties – such employees shall be placed on a re-employment list for a period of up to 39-month



60 Days (not pro-rated) Industrial Accident and Illness Leave Full Salary (T.D. paid to the district) (EC §44984)			
	10 days (pro-rated), Current Unused Sick Leave, plus T.D. up to full salary (EC§44978) (T.D. paid to the district)		
		Accumulated Sick Leave, (pro-rated) plus T.D., up to full salary (T.D. is paid to the district)	
			Sub-Differential Pay begins for 5 school months (one only per year) EC§44977 T.D. paid to:*
			Five school months of 50% pay. EC§44983 (possibly one only per year) T.D. paid to:*

Day 1

Day 61

Day ???

Day ???



Discussion of the Rights of K-12 Classified Employees Regarding Leave of Absence

- Classified Employees—Injured at Work
 - Entitled to no less than the following:
 - 60 working days of paid leave
 - Not subject to the Labor Codes three day waiting period
 - 60 day industrial accident shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award



Discussion of the Rights of K-12 Classified Employees Regarding Leave of Absence

Payment

- Classified employee in the first 60 days shall be paid such portion of the salary due as when added to temporary disability will result in payment of not more than full salary (not pro-rated) by payment of temporary disability.

then

- At the end of the 60 days accident leave, classified employee can utilize other leaves:
 - Pro-rated sick leave—both current and accumulated (12 days per year)
 - Vacation time and other paid compensating on a voluntary basis
 - Sick leave is to be pro-rated on an hourly and daily basis so that when added to temporary disability due, a full day's wage is achieved



Discussion of the Rights of K-12 Classified Employees Regarding Leave of Absence

Payment

- Classified employee is entitled to one of the two following benefits:
 - Five months of sub-differential pay (regular salary less the amount actually paid to the substitute)
- OR
- 88 working days (100 less 12 current days from EC §45191) sick leave at not less than 50% of salary



Discussion of the Rights of K-12 Classified Employees Regarding Leave of Absence

- 39-Month Re-Employment List
 - When all available leaves of absence have been exhausted, employee shall be placed on a re-employment list for a period of 39-months.



Significant Cases

- ***TOOTELL v. STATE COMPENSATION INSURANCE FUND***
 - Applicant was paid an annual salary which continued during the vacation period

- ***SIGNATURE FRUIT COMPANY v. WORKERS' COMPENSATION APPEALS BOARD***
 - Specifically allows for no payment of temporary disability during the “off season” for *seasonal workers*

- ***JIMENEZ v. SAN JOAQUIN VALLEY LABOR***
 - Authorizes a two rate system for seasonal workers, with a higher “in season rate”
 - As an alternative, the Jimenez case allows for dividing yearly earnings by the full year (52 weeks), resulting in a lower rate, but requiring that such rate be paid during the summer.



Significant Cases

- ***TEMPORARY DISABILITY INDEMNITY RESTRICTIONS***
 - Labor Code limits temporary disability to 104 compensable weeks
 - Benefits paid pursuant to the Education Code count as against the temporary disability limitation



Discussion of Community College Rights of Academic Employees Regarding Leave of Absence

- Academic Employees—Injured at Work
 - Entitled to receive not less than 60 days of industrial accident and illness leave
 - 60 days must be paid for days during which the schools of the district are required to be in session
 - 60 days shall commence on the first day of the absence
 - 60 day industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award
 - The adjuster can voucher the district for the temporary disability amount



Discussion of Community College Rights of Academic Employees Regarding Leave of Absence

Payment

- The first 60 school days, academic employee shall be paid such portion of the salary due that when added to temporary disability indemnity rate will result in payment of not more than full salary
- The 60 day period is not “pro-rated”.
- Payment of temporary disability does not extend the 60 day period.

then

- Absent more than 60 school days, the academic employees is allowed the following:
 - Full salary consisting of industrial temporary disability augmented with 10 days of pro-rated current sick leave and then pro-rated accumulated sick leave
 - Only that amount of sick leave necessary to provide a full day’s pay or salary shall be used to augment the temporary disability



Discussion of Community College Rights of Academic Employees Regarding Leave of Absence

Payment

- After an academic employee has exhausted his or her pro-rated current sick leave and pro-rated accumulated sick leave, he or she is entitled to one of the following two options:
 - Five month of sub-differential pay
 - OR
 - Five school months of 50%, or more, regular salary



Discussion of Community College Rights of Classified Employees Regarding Leave of Absence

- Classified Employees—Injured at Work
 - Entitled to receive not less than 60 days of industrial accident or illness leave
 - 60 days of paid leave must be paid for not less than 60 working days
 - 60 days of industrial accident leave shall commence on the first day of the absence
 - Only one 60 day period for each injury or industrial illness
 - 60 day industrial accident or illness leave shall be reduced by one day for each day of authorized absence regardless of a temporary disability indemnity award



Discussion of Community College Rights of Classified Employees Regarding Leave of Absence

Payment

- The 60-day period is not “pro-rated” with temporary disability such as to extend the 60 days. EC §88192(e)
 - Industrial temporary disability will normally be paid to the school district, and the employee will continue to receive “full salary” directly from the district.
- then*
- Community college classified employee has now been absent more than 60 school days is allowed following:
 - Full salary consisting of industrial temporary disability, (paid to the district) augmented with pro-rated, 12 days current sick leave and accumulated leave.
 - Only that amount of sick leave necessary to provide a full day’s pay or salary shall be used to augment the temporary disability



Discussion of Community College Rights of Classified Employees Regarding Leave of Absence

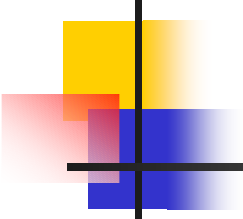
Payment

- After a community college certificated employee has exhausted their pro-rated current sick leave and pro-rated accumulated leave, they are entitled to one of the following two options:
 - Five months sub-differential pay
 - OR
 - Five months of 50% or more of his/her regular salary

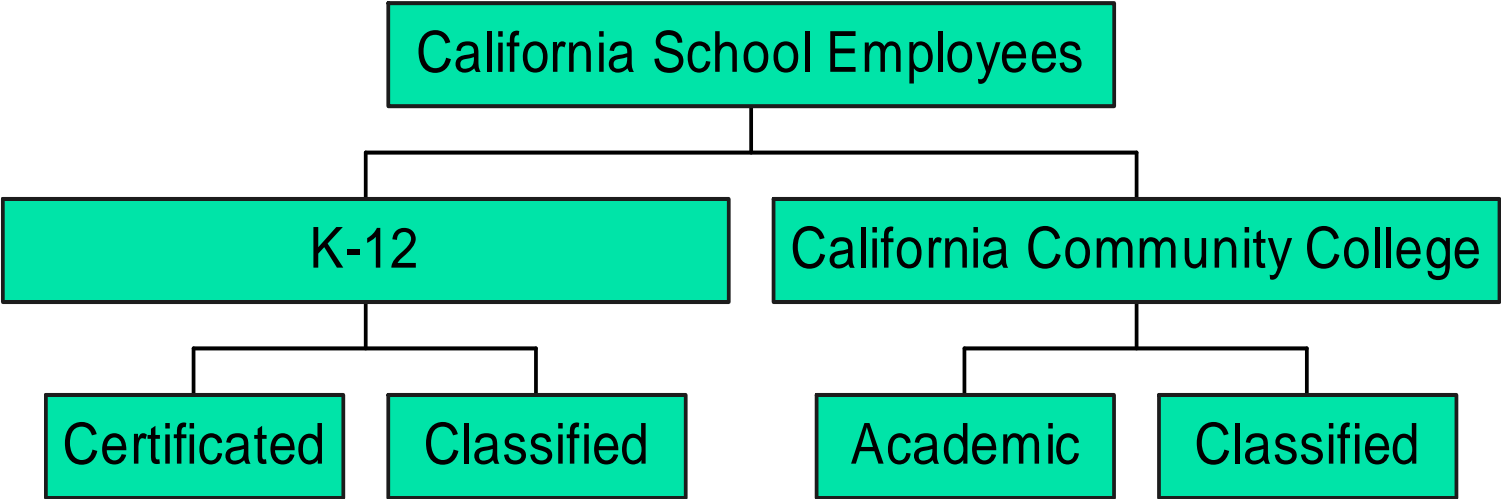


Discussion of Community College Rights of Classified Employees Regarding Leave of Absence

- 39-Month Re-Employment List
 - When a community college certificated employee has exhausted all available leaves (paid and unpaid), such employee shall be placed on a re-employment list for a period of up to 39-months.



CALIFORNIA SCHOOL EMPLOYEES CHART



K-12 CERTIFICATED

60 Days (not pro-rated) Industrial Accident and Illness Leave (T.D. is paid to the district) (EC §45192)			
	12 days (pro-rated) current Paid Leave plus T.D. up to Full Salary (T.D. is paid to the district) (EC §45191)		
		All Accumulated Sick Paid Leave (pro-rated) plus T.D. up to Full Salary and vacation (T.D. is paid to the district)	
Five Calendar Months Sub-Differential (EC §45196) (Atty Gen Op) (T.D. is paid to to the district per above)			
	-OR-	-OR-	
			88 Working Days of 50% (EC §45196) Exclusive of other paid leave or vacation T.D. is paid to: *

Day 1

Day 61

* The employee gets the higher rate of what T.D., sub diff, or 50% salary would pay.

- a. If T.D. rate less than the sub difference or 50% salary rate, all T.D. goes to the district and the district pays the employee the sub difference or 50% salary rate
- b. If T.D. rate higher than sub difference or 50% salary, T.D. equal to the sub difference or 50% salary pay goes to the district. The remainder of T.D. Rate goes to the employee.

K-12 CLASSIFIED

60 Days (not pro-rated) Industrial Accident and Illness Leave (T.D. is paid to the district) (EC §45192)			
	12 days (pro-rated) current Paid Leave plus T.D. up to Full Salary (T.D. is paid to the district) (EC §45191)		
		All Accumulated Sick Paid Leave (pro-rated) plus T.D. up to Full Salary and vacation (T.D. is paid to the district)	
Five Calendar Months Sub-Differential (EC §45196) (Atty Gen Op) (T.D. is paid to the district per above)			
	-OR-		-OR-
			88 Working Days of 50% (EC §45196) Exclusive of other paid leave or vacation T.D. is paid to: *

Day 1

Day 61

* The employee gets the higher rate of what T.D., sub diff, or 50% salary would pay.

- a. If T.D. rate less than the sub difference or 50% salary rate, all T.D. goes to the district and the district pays the employee the sub difference or 50% salary rate
- b. If T.D. rate higher than sub difference or 50% salary, T.D. equal to the sub difference or 50% salary pay goes to the district. The remainder of T.D. Rate goes to the employee.

COMMUNITY COLLEGE DISTRICT ACADEMIC EMPLOYEES (CERTIFICATED)

60 Days (not pro-rated) Industrial Accident and Illness Leave Full salary (EC §87787) (T.D. paid to district)			
	10 days current Unused Sick Leave (pro-rated), Plus T.D. Up To Full Salary (EC §87781) (T.D. paid to district)		
		Employee may elect to use Accumulated Sick Leave, (pro-rated) Plus T.D., up to Full Salary (T.D. is paid to the district)	
			Sub-Differential Pay begins For 5 School Months (EC §87780) (T.D. paid to: *)
			OR
			Five School Months of 50% Pay. (EC §87786) (T.D. paid to: *)
Day 1	Day 61	Day ???	Day ???

- * The employee gets the higher rate of what T.D., sub diff, or 50% salary would pay.
- a. If T.D. rate less than the sub difference or 50% salary rate, all T.D. goes to the district and the district pays the employee the sub difference or 50% salary rate
 - b. If T.D. rate higher than sub difference or 50% salary, T.D. equal to the sub difference or 50% salary pay goes to the district. The remainder of T.D. Rate goes to the employee.

COMMUNITY COLLEGE DISTRICT CLASSIFIED EMPLOYEES

60 Days (not pro-rated) Industrial Accident and Illness Leave EC §88192 (in lieu of 12 sick days per EC §88191) (T.D. is paid to the district)			
	All Current Sick Leave (12 days) plus T.D. up to Full Salary (T.D. is paid to the district) (EC §88191)		
	All Accumulated Sick Paid Leave (pro-rated) plus T.D. up to Full Salary (EC §88192) (T.D. is paid to the district)		
			Five Months Sub-Differential Pay (EC §88196) T.D. is paid to: *
	-OR-		
			88 Working Days of 50% Pay (EC §88196) Exclusive of other paid leave or vacation T.D. is paid to: *

Day 1

Day 61

* The employee gets the higher rate of what T.D., sub diff, or 50% salary would pay.

- a. If T.D. rate less than the sub difference or 50% salary rate, all T.D. goes to the district and the district pays the employee the sub difference or 50% salary rate
- b. If T.D. rate higher than sub difference or 50% salary, T.D. equal to the sub difference or 50% salary pay goes to the district. The remainder of T.D. Rate goes to the employee.