

**804 INDUSTRIAL ACCIDENT OR INDUSTRIAL ILLNESS LEAVES**

**Education Code Sections**

**87042.** Any school employee of a community college district who is absent because of injury or illness which arose out of and in the course of the person's employment, and for which the person is receiving temporary disability benefits under the workers' compensation laws of this state, shall not be entitled to received wages or salary from the district which, when added to the temporary disability benefits, will exceed a full day's wages or salary.

During such periods of temporary disability so long as the employee has available for the employee's use sick leave, vacation, compensating time off or other paid leave of absence, the district shall require that temporary disability checks be endorsed payable to the district. The district shall then cause the employee to receive the person's normal wage or salary less appropriate deductions including but not limited to employee retirement contributions.

When sick leave, vacation, compensating time off or other available paid leave is used in conjunction with temporary disability benefits derived from workers' compensation, as provided in this section, it shall be reduced only in that amount necessary to provide a full day's wage or salary when added to the temporary disability benefits.

**87043.** Notwithstanding the provisions of Sections 87042, 87787, and 88192, a community college district may waive the requirement that temporary disability checks be endorsed payable to the district, and may in lieu thereof, permit the employee to retain his temporary disability check, providing that notice be given to the district that such check has been delivered to the employee. In such cases, the district shall then cause the employee to receive his normal wage or salary less appropriate deductions, including, but not limited to, employee retirement contributions, and an amount equivalent to the face amount of the temporary disability check, which the employee has been permitted to retain. In all cases, employee benefits are to be computed on the basis of the employee's regular wage or salary prior to the deduction of any amounts for temporary disability payments.

Nothing contained herein shall be deemed to in any way diminish those rights and benefits which are granted to a school employee pursuant to the provisions of Sections 87042, 87787, and 88192.

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**88192.** (a) The 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 community college district that is created or whose boundaries or status is changed by an action to organize or reorganize community college districts completed after January 1, 1975, shall provide, by rules and regulations, for these leaves of absence on or before the date on which the organization or reorganization of the community college district becomes effective for all purposes.

(b) 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 shall 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.

(c) 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 employee shall be entitled to use only so much of his or her accumulated or available sick leave, accumulated compensating time, vacation or other available leave as, when added to the workers' compensation award, provide for a full day's wage or salary.

(d) The governing board of a community college district, 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 his or her position without suffering any loss of status or benefits.

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(e) A period of leave of absence, paid or unpaid, shall not be considered to be a break in service of the employee.

(f) During a 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 of a community college district, the employee shall endorse to the community college district wage loss benefit checks received under the workers' compensation laws of this state. The community college 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.

(g) 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 his or her position, the employee, 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 employee shall be employed in a vacant position in the class of his or her previous assignment over all other available candidates except for a reemployment list established because of lack of work or lack of funds, in which case the employee shall be listed in accordance with appropriate seniority regulations.

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

(i) In the absence of rules and regulations adopted by the governing board of a community college district pursuant to this section, an employee shall be entitled to industrial and accident or illness leave as provided in this section but without limitation as to the number of days of that leave and without any requirement of a specified period of service.

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

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(k) This section applies to community college 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).

**88199.** Governing boards of community college districts may grant leaves of absence to persons employed in nonacademic positions, and at their discretion may pay compensation at the rate the board prescribes, during the absence, to any such employee whose absence is caused by accident or illness, whether or not the absence arises out of or in the course of the employment of the employee, or because of quarantine which results from his or her contact with other persons having a contagious disease while performing his or her duties.

A. Definitions

An industrial accident leave is a leave granted for absence caused by an occupational illness or injury which arose out of and in the course of District employment for which an employee is receiving temporary disability benefits under the applicable workers' compensation laws.

An assault and battery leave is a type of industrial accident leave that is granted for absence because of an injury resulting from an assault and/or battery that was directly related to the performance of duties but is considered to be above and beyond the normal risks expected by an employee of the District. The Division of Human Resources is responsible for determining if an absence is due to an assault and/or battery.

B. Use of Industrial Accident Leave

1. Paid industrial accident leave shall be granted provided that:

- a. The employee has permanent status; or
- b. The employee is a probationary classified employee who has completed at least 130 days of paid service; or
- c. The employee has completed at least 130 working days of paid service in any combination of limited-term, probationary, or permanent status during each of the three consecutive years immediately preceding the beginning of the leave. A day of paid service shall be defined as any day for which pay is received.

2. The leave shall be granted in accordance with the employee's assignment, from the first day of absence to and including the last day of absence resulting from each separate industrial illness or industrial injury. The length of the leave granted shall not exceed 60 working days in any one fiscal year.

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3. Allowable leave shall not be accumulative from fiscal year to fiscal year. When an industrial accident leave extends into the next fiscal year, the employee shall be entitled to only the unused amount of leave for the same injury or illness.
4. The leave shall be reduced by one day for each day of authorized absence regardless of the temporary disability allowance made under applicable workers' compensation laws. Days absent while on leave shall not be deducted from paid illness leave to which the employee may be entitled under Rule 808, ILLNESS LEAVE.
5. A retired employee employed in accordance with Rule 763, EMPLOYMENT OF RETIRED PERSONS, shall be granted a paid industrial accident leave if the employee qualifies in accordance with Paragraph B.1.c., above. The leave shall extend only to the last day of the employee's current assignment or to 60 working days, whichever occurs first.
6. An academic employee who has an additional assignment in the classified service and is granted a leave due to industrial accident or industrial illness from their academic assignment shall be granted an industrial accident leave from the classified assignment provided that they are eligible for industrial accident pay in that assignment.
7. If an employee has exhausted all accumulated paid leave privileges, a District-approved medical consultant may approve an employee being placed on an industrial accident leave without pay. The total time of all leave benefits provided under this rule, including unpaid industrial accident leave, shall not exceed 36 months for any one industrial accident or industrial illness.
8. Paid leave shall be granted from the first day of absence resulting from assault and/or battery, but paid leave shall not exceed one calendar year. If unable to return at the end of a calendar year, an employee may be placed on another type of paid or unpaid leave for which they meet eligibility requirements.
9. If the District-approved medical consultant determines that an employee is unable to return to duty after exhausting paid industrial accident leave, the employee shall be placed on illness leave in accordance with Rule 808, ILLNESS LEAVE, provided they are eligible therefor.

Accumulated illness leave will be reduced only in the amount necessary to provide a full day's wages or salary, as indicated in the employee's assignment, when added to compensation without penalties from the workers' compensation fund. Accumulated half-pay illness leave shall be reduced by no more than eight hours for any one day or no more than the employee's basic daily assignment.

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C. Compensation

1. While an employee is on any paid leave resulting from an industrial accident or industrial illness, the employee's salary paid by the District shall not, when added to a normal temporary disability allowance award without penalties granted the employee under workers' compensation laws, exceed the employee's regular salary. A permanent employee's regular salary is computed on the basis of the number of hours and days in the employee's basic daily assignment. The regular salary of an employee who is not permanent shall be computed on the basis of the average number of hours worked each pay period in which the employee was in paid status during the preceding 12-month period. An employee who receives a salary differential other than shift differential shall lose the advantage of the differential after 10 consecutive days of paid industrial accident leave for any one accident or illness.
2. During all paid leaves resulting from an industrial accident or industrial illness, the employee shall endorse to the District all wage-loss benefit checks received under workers' compensation laws. The District shall issue to the employee appropriate warrants for payment of wages, loss benefits, salary, and/or leave benefits and shall deduct normal retirement and other authorized contributions.
3. If an employee continues to receive temporary disability allowance from the workers' compensation fund after all paid illness leave has been exhausted following a paid industrial accident leave, an employee may choose to receive pay from accrued vacation to the extent necessary to make up the employee's regular salary.
4. When an employee is on an assault and battery leave, the employee will be paid their full salary for the assignment in which serving when injured for a maximum of one year. Except for the one year provision, compensation is paid under the same provisions as apply to other industrial accidents.
5. Final allowance for permanent industrial disability settlements shall not be subject to remittance to the District under this rule.

D. Return to Service Following Leave

1. Upon return to service from any paid or unpaid leave resulting from an industrial accident or industrial illness, an employee shall be placed in a position in their former job classification and, if vacant, to their former position in the class. If no vacancy exists in the former class, they shall have the right to exercise bumping rights provided that they do not have the least seniority in that class. If an employee's former class has ceased to exist, the employee may be reassigned or placed on-the reemployment list for the classes in which they had attained regular status. If a negotiated bargaining agreement contains additional provisions regarding the rights of an

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employee returning to service from an industrial accident leave, then those rights shall be granted to the employee upon return to service.

2. An employee returning from such paid or unpaid leave of absence shall not have any loss or gain in status or benefits other than that which is specifically provided in applicable provisions of the Education Code and Personnel Commission rules. An employee shall continue to receive seniority credit for all purposes while on such a paid or unpaid leave of absence.
3. When all paid or unpaid leaves have been exhausted, and the employee is not medically able to assume the duties of their position, the employee shall be placed on a reemployment list for a period of 39 months as if they were being laid off. An employee on a reemployment list shall have the same rights and benefits as an employee laid off because of lack of work or lack of funds as provided in Rule 740, LAYOFF AND REEMPLOYMENT.

An employee subject to placement on a reemployment list for medical reasons may request a review of other placement options through the Division of Human Resources.

4. An employee who fails to accept an appropriate assignment after being medically approved by the District Medical Consultant shall be removed from the reemployment list. Appropriate assignment is defined as an assignment to the employee's former class at the time of layoff, in the former status and time basis, and in assignment areas in which the employee has made themselves available. Employees removed from a reemployment list under this rule may appeal the removal using the procedure indicated in Rule 600, REJECTION OF APPLICANTS, CANDIDATES, AND ELIGIBLES.
5. An employee returning to duty shall be subject to provisions of Rule 682, HEALTH EVALUATIONS.