

EMPLOYEE LEAVE LAWS

For Alabama Public School Employees



Alabama Association of School Business Officials
Certificate Program
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EMPLOYEE LEAVE LAWS

On the SDE Website

- www.alsde.edu
- Select *Department Offices* tab on the left-hand side near the top of the screen.
- Click on the office
“*LEA Fiscal Accountability*”
- Select **Employee Leave Laws**.

EMPLOYEE LEAVE LAWS

On the SDE Website

- **Catastrophic Sick Leave Transfer Form**
- On-the Job Injury
 - **LEA Injury Report Form**
 - **LEA Physician Certification Form**
- Military Leave
- **Employee Leave Law Summary**

EMPLOYEE LEAVE LAWS
For Alabama Public School Employees

- Sick leave
- Personal leave
- Sick leave banks
- Catastrophic sick leave
- On-the-job injury
- Leave-of-absence
- Vacation leave
- Military leave
- Military leave differential pay

Sick Leave

- Full-time employees & adult bus drivers
- Earn one day per month of employment
- Unlimited accumulation of sick leave

Sick Leave

- Transfer of sick leave balance between Alabama public education institutions:
 - County and city boards of education,
 - Two-year postsecondary institutions,
 - Four-year colleges and universities,
 - and,
- Various other agencies but limited to only a few specified state agencies.

Sick Leave Definition

- The employee's absence from duty because
 - Personal illness
 - Incapacitating personal injury
 - Attending to an ill member of the **family**
 - Death in the **family**
 - Death, injury, or illness of another person who has unusually strong personal ties

Family Members

- **Illness** of a parent, spouse, child, **foster child currently in the care and custody of the employee**, brother or sister, or an individual with a close personal tie.
- **Death** of a parent, spouse, child, brother or sister, in-laws (father, mother, son, brother, daughter, sister), nephew, niece, uncle, aunt, grandparent or grandchild.

Sick Leave Legal Opinions

- Employee earns sick leave while on sick leave or other leave-with-pay.
- Sick leave may only be used for legal purposes. (Illness, injury, or death).
- Cannot be paid for unused sick leave.
- Sick leave cannot be transferred between employees (except for catastrophic leave).

**Sick Leave Legal Opinions
(continued)**

- An employee that holds two different full-time jobs earns sick leave for each position.
- A doctor's excuse or other justification may only be required if there is probable cause to believe that sick leave is being abused or misused by the employee.

Personal Leave

- Any certificated employee.
- Support employees who work an average of at least 20 hours per week.
- At least 2 days with pay required.
- Up to 3 additional days:
 - Without pay
 - With pay
 - Partial pay (deduction for the cost of a substitute)

Personal Leave

- Unused days do not carry-over to the next year.
- An employee cannot be required to disclose their reasons for requesting personal leave.

Personal Leave

- Any employee has the option to convert unused personal leave days to sick leave at the end of the scholastic year if the unused days are funded (full pay or partial pay).
- A certificated employee has an additional option of being paid for unused personal leave days at the end of the scholastic year if the unused days are funded (full pay or partial pay).

Personal Leave Legal Opinions

- Personal leave days are considered funded even if the employee must pay for a substitute in order to receive the additional personal leave days.
- A certificated employee who chooses to be paid for unused personal leave days is to be reimbursed at the highest daily rate paid to substitute teachers.
- A board of education is not required to reimburse support employees for unused personal leave.

**Personal Leave Legal Opinions
(continued)**

- Local boards of education do not have to grant the same number of personal leave days (beyond the 2 required) to support employees as they do to teachers.
- The cost of a substitute cannot be deducted from an employee converting unused personal leave to sick leave.

What is a Sick Leave Bank?

- A sick leave bank allows an employee to “bank” their own sick leave for future use.
- A participating sick leave bank member may borrow days from the sick leave bank when the member’s non-banked sick leave days have been exhausted.
- The employee has to repay the borrowed days to the sick leave bank.

Sick Leave Banks

- A local board of education will establish a sick leave bank plan upon request of 10% of the board’s full-time employees.
- A secret ballot vote by employees will determine if the certificated employees and support employees have separate sick leave banks or one joint sick leave bank.

Sick Leave Banks

- Each sick leave bank will have a committee consisting of five employees.
- The sick leave bank committee will write the guidelines for the operation of the bank.
- The sick leave bank guidelines are to be approved by secret ballot vote of participating members.

Sick Leave Banks

- Sick leave bank committee
 - One member is appointed by the superintendent.
 - Four members are elected to a one-year term by a secret ballot vote of the bank’s members.
 - No member can serve on the committee for longer than 5 years.

Sick Leave Banks

- Sick leave bank guidelines
 - May adopt appropriate and beneficial guidelines in addition to those contained in the law, if they don’t conflict with the law.
 - Must contain a provision whether or not to allow employees, who have previously failed or refused to join the sick leave bank, the option to join the sick leave bank upon the deposit of the required number of sick leave days.

Sick Leave Banks

- Forms and administrative procedures for the sick leave bank will be developed by the sick leave bank committee.

Sick Leave Banks

- Sick leave bank guidelines must establish an equal number of sick leave days (not to exceed 5 days) for deposit by each participating member in order to become a member of the sick leave bank.
- Employee membership in the sick leave bank is voluntary.

Sick Leave Banks

- New employees are allowed to join the sick leave bank at the beginning of employment.
- If the new employee does not have the required number of sick leave days to join the bank, the appropriate number of sick leave days will be advanced to the new employee as the deposit to join the sick leave bank.

Sick Leave Banks

- Sick leave days withdrawn from the sick leave bank can only be used for the reasons allowed for sick leave.
- Sick leave bank committee will investigate all alleged abuse of the sick leave bank.

Sick Leave Banks

- An employee cannot owe more than 15 days to the sick leave bank, unless over 50% of the sick leave bank members vote to extend the limit.
- Days are to be repaid to the sick leave bank monthly, as the sick leave day is earned is month by the employee.

Sick Leave Banks

- Sick leave bank balance on deposit:
 - Upon employee transfer to an eligible employer, the days are withdrawn and transferred with the employee.
 - Upon retirement, the days are withdrawn and made accessible for retirement credit.

Sick Leave Banks

- If an employee who owes days to the sick leave bank resigns or is terminated, the value of each of the owed days will be deducted from the final paycheck at the employee's current daily rate of pay.

Sick Leave Bank Legal Opinions

- A member of a sick leave bank can give only the number of days to the sick leave bank allowed by law (not to exceed 5 days).
- If the final paycheck does not cover the value of the days owed to the sick leave bank when the employee leaves, the board must exercise due diligence and appropriate procedures to collect the debt.

Catastrophic Sick Leave

- **Law covers sick leave bank members in:**
 - All local boards of education
 - Two-year postsecondary institutions (*for now*)
 - DYS School District
 - Alabama Institute of Deaf and Blind
 - Alabama School of Fine Arts
 - Alabama High School of Math & Science
 - Alabama A&M University (*but no other universities*)

Catastrophic Sick Leave

- **An employee must be a member of a sick leave bank to donate or receive catastrophic sick leave days.**
- **A donating employee does not have to be a member of the same sick leave bank as the recipient employee.**

Catastrophic Sick Leave Defined

- “Any illness, injury, or pregnancy or medical condition related to childbirth, **certified by a licensed physician which causes the employee to be absent from work for an extended period of time.**”

Catastrophic Sick Leave

- An employee may use catastrophic sick leave days for himself or herself or for the following covered persons:
 - Parent
 - Spouse
 - Child **including a foster child currently in the care and custody of the employee**
 - Brother or sister
 - Individual with a close personal tie

Catastrophic Sick Leave

- An employee must exhaust all sick and personal leave days before using catastrophic sick leave.
- An employee must borrow and utilize the maximum number of days from the sick leave bank before using catastrophic sick leave.

Catastrophic Sick Leave

- Donated catastrophic sick leave may be used to repay days owed to the sick leave bank by the recipient employee.
- Sick and personal leave days earned while the employee is utilizing catastrophic sick leave days must be exhausted before continuing to use catastrophic sick leave days.

Catastrophic Sick Leave

- A member of a sick leave bank may donate a specific number of days (not to exceed 30 sick leave days) to a sick leave bank for a specific employee to use for a catastrophic illness.
- The donating employee cannot be required to donate a minimum number of days.

Catastrophic Sick Leave

- The sick leave bank committee will adopt guidelines for reverting unused donated days to the employees who donated the sick leave days.
- Each sick leave bank committee is responsible for writing guidelines and administrative procedures for catastrophic sick leave. [*Should define "extended period of time".*]

**Catastrophic Sick Leave
Legal Opinions**

- State laws do **not** contain a limitation on the number of catastrophic sick leave days that an employee can receive by donations from other sick leave bank members.

On-the Job Injury

- Full-time employees & adult bus drivers.
- Each board of education will establish procedures and forms for notification of on-the-job injury.
- Sick leave days will not be deducted for the days the employee is paid for an absence approved for on-the-job injury pay.

On-the Job Injury Defined

- **“Any accident or injury to the employee occurring during the performance of duties or when directed or requested by the employer to be on the property of the employer, which prevents the employee from working or returning to his or her job.”**

On-the Job Injury

- Within 24 hours after occurrence of the injury, the employee must make proper notification of the injury to the local superintendent of education (or school principal, if applicable) in accordance with the notification procedures of the local board of education.

On-the Job Injury

- In the event the employee is clinically unable to report the injury, the notification procedures shall permit the reporting of the injury by another person who is reasonably knowledgeable to make the notification of the injury.

On-the Job Injury

- Within 30 calendar days of notification of the injury, the local superintendent (or designee) will inform the injured employee about the board's approved procedures for on-the-job injuries and the employee's rights to request reimbursement from the State Board of Adjustment.

On-the Job Injury

- The board policies may require medical certification from the employee’s physician that the employee was injured and cannot return to work as a result of the injury.
- May also require the physician’s statement that there is a reasonable expectation that the injured employee will be able to return to work.
- The superintendent may require a second opinion at the expense of the board.

On-the Job Injury

- Once the superintendent determines that the employee has been injured on the job and cannot return to work as a result of the injury, the employee’s salary and benefits will continue up to **90** working days consistent with the employee’s injury.
- The board may adopt a policy to extend the 90-day period.

On-the Job Injury

- The employee may file for reimbursement with the State Board of Adjustment for unreimbursed medical expenses and costs incurred as a result of an on-the-job injury.
- Reimbursement to the employee shall be determined by the Board of Adjustment.

On-the Job Injury

- The school board may request state funds for reimbursement for the cost of substitutes for the employee injured on the job.
- The reimbursement is limited to 90 days for each approved on-the-job injury at the state-funded daily substitute rate.
- Reimbursement is contingent on annual legislative appropriations.

Leaves of Absences

- Full-time employees and adult bus drivers may be **paid** for *leaves of absences*.
 - For training.
 - When approved by the State Board of Education as beneficial to the state’s educational objectives.
 - Employee absence for an unavoidable cause (other than sickness) while school is in session. (Limited to one week)

Leaves of Absences

- The board may grant a teacher an unpaid leave of absence for good cause for 1 year.
- The board may extend the unpaid leave of absence for a valid reason for 1 year.
- The unpaid leave of absence will not impair the continuing service status of the teacher.

Vacations

- The local board of education may adopt policies and procedures to provide **paid** vacations for full-time employees and adult bus drivers.

Military Leave

- State law provides for 2 types of paid military leave (in addition to *military leave differential pay*) — **federal military leave** and **state military leave**.
- The most common military leave taken by LEA employees is for training in the Alabama National Guard and the Reserves of the Armed Forces. (Federal military leave)

Military Leave

- For **federal military leave**, employees of local boards of education are provided time away from work, at full pay, for no more than 168 hours (usually equivalent to 21 days) *per calendar year*.
- State law prohibits the board from paying the employee full pay for days exceeding 21 days of **federal military leave** per year.

Military Leave

- For **state military leave**, employees of local boards of education are provided time away from work, at full pay, for no more than 168 hours (usually equivalent to 21 days) *at any one time*.
- **State military leave** is occasionally used by the Governor to call up the National Guard for natural disasters.

Military Leave

- An employee may receive full pay for state and federal military leave in the same year.
- Employees on paid or unpaid military leave continue to accumulate service credit for any seniority, status, and rate of pay the employee would have obtained had the employee not taken military leave.

Military Leave

- The U. S. Congress provided clear protection for all members of the uniformed services, including National Guard and Reserve members, with the October 1994 passage of the Uniformed Services Employment and Reemployment Rights Act (**USERRA**).

Military Leave

- No law, policy, practice, etc. that would diminish the rights established in **USERRA** takes precedence over the provisions of **USERRA**.
- **USERRA** does not supersede, nullify, or diminish any law, policy, practice, agreement, or contract that provides greater rights or benefits to service members.

Military Leave Legal Opinions

- A local board of education may not:
 - Require the employee to schedule military leave so that it does not interfere with the school year or employee duties.
 - Restrict the taking of military leave for non-required duty or training.
 - Condition continued employment on the employee’s foregoing military leave.

Military Leave Legal Opinions

- A local board of education cannot interfere with any employee’s rights to join the reserves or guard, or interfere with the employee’s membership in the reserves or guard.
- A local board of education may not deduct an amount equivalent to the compensation earned in the military during the time the employee is on military leave.

Military Leave Legal Opinions

- Military leave, paid or unpaid, counts as time spent on the job for any calculation, determination, promotion, or other decision that is based upon length of employment.

Military Leave Differential Pay

- State law provides for *military leave differential pay* for employees of local boards of education called into active service in the war on terrorism.
- The Alabama Adjutant General will determine if the active military service qualifies for *military leave differential pay*.

Military Leave Differential Pay

- An employee called into active service of the U. S. armed forces during the war on terrorism (which began September 11, 2001) is entitled to compensation from the local board of education if the basic pay for active military service is less than the salary the employee would receive if still working for the board.

Military Leave Differential Pay

- For purposes of calculating the *military leave differential pay*, the board salary includes supplements, pay raises, and salary schedule step increases the employee would receive if still working for the board.
- The employee is not due the *military leave differential pay* for any days that the employee receives full pay from the school board for accrued vacation leave or the 21-day annual military leave pay.

Military Leave Differential Pay

- *Military leave differential pay* is subject to state and federal tax withholdings but not employer or employee FICA or TRS matching.

Military Leave Differential Pay

- The employee does not earn sick leave or vacation leave for the days the employee receives the *military leave differential pay*.
- However, if the school board uses length of service to determine personal leave or vacation days, the time spent on active duty military service counts as service credit as if the employee is still on-the-job.

Military Leave Differential Pay

- The U. S. Congress provided clear protection for all members of the uniformed services, including National Guard and Reserve members, with the October 1994 passage of the Uniformed Services Employment and Reemployment Rights Act (**USERRA**).

Military Leave Differential Pay

- No law, policy, practice, etc. that would diminish the rights established in **USERRA** takes precedence over the provisions of **USERRA**.
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**Military Leave Differential Pay
Legal Opinions**

- Military pay in Act No. 2002-430 means basic pay and does not include special and incentive pays, allowances, or other fringe benefits.

**Military Leave Differential Pay
Legal Opinions**

- Sick leave taken for authorized sick leave purposes before the employee's departure for active duty could be eligible for restoration pursuant to Act No. 2002-430.
- However, accrued sick leave cannot be used while the employee is on military leave.

**Military Leave Differential Pay
Legal Opinions**

- Under federal law, it is illegal for an employer to require an employee to take vacation, annual, or similar paid leave for the performance of military duty.
- Annual (or vacation) leave taken voluntarily by the employee shall be restored. The restored leave can then be taken again but can not be restored again.

Jury Duty

- A full-time employee is entitled to the usual compensation for time spent –
 - Responding to summons for jury duty.
 - Participating in the jury selection process.
 - Actually serving on a jury.
- But not jury duty that occurs during time the employee is not scheduled to work.

Subpoenaed as Witness

- Employee is entitled to the usual pay when subpoenaed as a witness related to the employee's job.
