

When You Need a Break: Vacation, Sick Leave, and other Paid or Unpaid Leaves of Absence

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This handout deals with paid and unpaid leaves during which you are absent from work. For meal and rest periods while you are present at work, please see our separate handout “‘Exempt’ and ‘Non-Exempt’ Employees: What the Distinction Means for Unit 4 Members.”

I. Absence *Without* Leave

A. An absence without leave is grounds for discipline or discharge.

“Absence without leave of an employee, whether voluntary or involuntary, for five consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked.” California Education Code § 89541(a)

B. An absence is without leave even if you still have vacation or paid/unpaid leave left but cannot use it.

Example A: You wake up in the morning feeling too sick to go to work. You have vacation left but no paid or unpaid leave, such as sick leave. You cannot use vacation because requests for scheduling vacation must be submitted at least 30 days in advance. Unless your supervisor tells you that the administration will allow you to use vacation anyway or that your absence is otherwise excused, your absence is without leave and you may be disciplined or discharged for it.

C. Informing your supervisor that you can't come to work does *not* excuse an absence without leave.

Example A continued: You leave the following message for your supervisor before the start of the workday: “I am sorry, but I am too sick to come to work today.” By itself, this message does not excuse your absence. Your absence is without leave and you may be disciplined or discharged for it.

D. You are *not* entitled to have your pay “docked” instead of being disciplined or discharged for absences without pay.

Example A continued: At the end of your message for your supervisor, you add: “Please dock my pay for today’s absence.” The administration is not required to do so. Instead, it can discipline or discharge you for the absence without leave.

II. Vacation

A. Whether or not you earn vacation depends on your classification.

1. Only 10-month, 11-month, and 12-month employees earn vacation.
2. Academic year employees do not earn vacation.

B. How much vacation you earn depends on your length of service and time base.

1. In the first three years of their employment, eligible full-time employees earn 5/6 of a day (or six hours and 2/3 of one hour) per monthly pay period. After twenty-five years of employment, eligible full-time employees earn two days (or sixteen hours) per monthly pay period. In between these extremes, the amount of vacation earned increases several times with length of service. *See* CBA Article 26.2
2. Part-time employees earn vacation on a pro-rata basis.

C. When you can use earned vacation depends on the administration.

1. You have to request vacation thirty (30) days in advance.

“Requests for scheduling vacation shall be submitted in writing to the appropriate administrator at least thirty (30) days in advance. When authorized to do so by the appropriate administrator, an employee may take vacation without submitting such a request. When a request is submitted in writing, the appropriate administrator shall respond in writing, either approving or denying the request. Failure to respond within ten (10) days to a timely request shall constitute approval of the request.” APC-CSU Collective Bargaining Agreement (“CBA”) Article 26.9

2. The President can deny your request or order you to take vacation when s/he sees fit.

“The President of the campus in which an employee is employed . . . shall determine when the employee shall take vacation which has been acquired in the current year and vacation which has been carried over from prior years. The determination made by the President . . . shall be made after consultation with the employee. The President . . . shall seek to accommodate the employee’s needs to the needs of the employment. Vacation, regardless of when it was accumulated, shall be taken as directed by the President” 5 Cal. Code Regs. § 49210

D. Whether or not you forfeit “excess” earned but unused vacation depends on you.

1. There is a *limit* on how much unused vacation you can carry over from one calendar year to the next . . . [continued on next page]

“Vacation credits are cumulative to a maximum of three hundred and twenty (320) working hours for ten (10) or less years of qualifying service, or four hundred and forty (440) working

hours for more than ten (10) years of such service. Accumulations in excess of these amounts as of January 1 of each year shall be forfeited by the employee” CBA Article 26.7

Exception: no limit on carry-over amount
in final year of employment before retirement

“[A]n employee who is in the final year of employment prior to service retirement under the Public Employees’ Retirement System or the State Teachers’ Retirement System may elect not to take vacation carried over from prior years and instead, receive a lump sum payment as of the date of separation”
5 Cal. Code Regs. § 49210

“As a result, an employee’s vacation balance in excess of the maximum for his/her respective employee group may be carried forward into the final year of employment without being forfeited.” CSU Technical Letter HR/Leaves 2012-01

2. [continued from previous page] . . . but the administration, *upon your request*, has to let you use any “excess” vacation to ensure that you do not exceed that limit.

“Whenever an employee’s accrued vacation amount will exceed or has exceeded the maximum accrual by the end of the calendar year as a result of the denial of one or more requests by the employee to schedule and use vacation in the last quarter of the calendar year, the following procedure shall apply:

- The employee shall submit a vacation request for the use of the excess vacation and the appropriate administrator shall respond to the request within ten (10) working days.
- In the event that the request has not been granted within the ten (10) day period, the employee and the appropriate administrator shall attempt to reach mutual agreement on alternative dates on which to use the excess vacation.
- If the employee and the appropriate administrator are unable to reach agreement, the employee may suggest three (3) alternative, non-overlapping periods of vacation time to be completed no later than June 30 of the new calendar year to utilize the excess vacation. The appropriate administrator shall agree to one of the three scheduling options submitted by the employee.
- If the employee fails to submit the three (3) scheduling options for use of the excess vacation, the appropriate administrator will direct the use of vacation on days to be determined by the appropriate administrator.” CBA Article 26.11

Exercise 1: It is September 1, 2013, the beginning of the new academic year. Fritz Fleishig has over twenty-five years of full-time service. He has 400 hours of earned but unused vacation. What, if anything, should Fritz do avoid losing some of this vacation? (Answers to all exercises can be found below on pages 10-12.)

E. Vacation is a “vested interest”: Other than by forfeiting “excess” vacation, you do not lose it if you do not use it.

1. CBA Article 26.13

“Upon separation from service without fault on his/her part, an employee is entitled to a lump-sum payment as of the time of separation for any unused or accumulated vacation or CTO. The vacation sum shall be computed by projecting the accumulated time on a calendar basis so that the lump sum will equal the amount which the employee would have been paid had he/she taken the time off, but not separated from service.”

2. CBA Article 26.14

“Employees separated from service through fault of their own are entitled to a lump-sum payment for any unused or accumulated vacation or CTO. The computation of this sum shall be based on actual accumulated time without projection as provided in 26.13.”

Exercise 2: Max Milkhig also has over twenty-five years of full-time service and 400 hours of earned but unused vacation. On May 1, 2013, he receives a lay-off notice effective May 31, 2013. For how many hours vacation will Max be paid at the time of his separation? Would your answer be different if Max had been discharged for misconduct rather than laid off?

III. Sick Leave

A. All employees accrue paid sick leave.

B. Length of service does *not* affect how much sick leave you accrue but time base does.

b. Full-time employees

“Following completion of one (1) qualifying pay period, a full-time employee shall accrue eight (8) hours of credit for sick leave with pay. Thereafter, for each additional qualifying pay period, eight (8) hours of credit for sick leave with pay shall be accrued.” CBA Article 19.1

c. Part-time employees

“Employees who are appointed less than full time shall accrue credit for sick leave with pay on a pro-rata basis.” CBA Article 19.2

C. When you can use sick leave depends (mostly) on you.

1. You must report use of sick leave “promptly” and may be required to provide “verification” when using sick leave for five or more consecutive days.

d. Reporting

“An employee shall be responsible for promptly reporting an absence to the appropriate administrator.” CBA Article 19.4

“An employee shall be responsible for promptly completing and signing the campus absence form and returning the absence form to the appropriate administrator or his/her designee.” CBA Article 19.4

e. Verification

“An employee may be required to provide a physician’s statement or other appropriate verification when absent five (5) or more consecutive days due to illness/injury.” CBA Article 19.6

2. You can use sick leave for a variety of reasons, including family care and bereavement leave.

“The use of sick leave may be authorized by the President only when an employee is absent because of:

- illness or injury;
- exposure to contagious disease;
- dental, eye, or other physical or medical examinations or treatments by licensed practitioners;
- illness or injury in the immediate family;^[1]
- death of a person in the immediate family;^[2] and/or
- childbirth or disability related to pregnancy.” CBA Article 19.10

D. Unlike vacation, sick leave may be accumulated *without limits*.

F. Unlike vacation, sick leave is *not* a “vested interest”: You lose it if you do not use it.

¹ “Sick leave for family care is primarily for emergency situations. Up to five (5) days of accrued sick leave credit may be used for family care during any one (1) calendar year. The appropriate administrator may authorize the use of additional sick leave for family care.” CBA Article 19.12

² “The President may authorize up to forty (40) hours of accrued sick leave for bereavement pursuant to provision 19.10.E. When one (1) or more deaths occur in a calendar year, up to forty (40) hours of accrued sick leave credit may be authorized for each death.” CBA Article 19.13

G. Sick leave can *not* be charged to *exempt* employees^[3] for partial-day absences.

“Employees who have absences of less than a full day shall receive a full day’s salary and shall neither have their salary docked nor be required to use sick leave or vacation for such absences of less than a full day.” CBA Article 28.27.C

Exercise 3: Yesterday, Bertha Bissig’s car was rear-ended. She will have to stay in the hospital for a week. Bertha recently survived a battle with cancer and, as a result, has no sick leave left. What can be done to help Bertha?

IV. Other Paid Leaves

A. Paid Parental Leave: thirty consecutive workdays for “each new child”

“An employee shall be entitled to up to thirty (30) workdays ‘parental leave’ with pay, which shall commence within sixty (60) days after the arrival of each new child. However, a maximum benefit of thirty (30) workdays with pay per calendar year shall be provided in connection with the placement of one (1) or more foster children with the employee or the employee’s spouse or domestic partner.

Parental leave shall be taken consecutively and in full-day increments unless mutually-agreed otherwise by the employee and the appropriate administrator. Such leave runs concurrently with any other related leaves for which the employee is eligible.

Parental leave shall be provided in connection with either:

- The birth and ongoing care in the employee’s home of a child with the employee, employee and his/her spouse or the employee and his/her domestic partner, or
- The placement of a child in the employee’s home, for the purpose of adoption or foster care, with the employee, the employee and his/her spouse, or the employee and his/her domestic partner.

An exception to the requirement for the child to be in the employee’s home shall be made when the employee provides documentation that the child is in the hospital or the child is with the spouse or domestic partner in another location and the employee is going to that location to care for the child.” CBA Article 20.14

³ Please consult CBA Appendices C and D or our separate handout “‘Exempt’ and ‘Non-Exempt’ Employees: What the Distinction Means for Unit 4 Members” to find out whether you are an exempt or non-exempt employee.

B. Paid Funeral Leave: five workdays for “each death of a significantly close person”

a. CBA Article 20.9

“For each death of a significantly close person, upon request to the President, the employee shall be granted five (5) days leave with pay.”

b. CBA Article 20.10

“A leave granted in accordance with provision 20.9 above may be supplemented in accordance with the bereavement provision in Article 19, Sick Leave, if requested by the employee.”

C. Paid Military Leave: first thirty calendar days of absence

a. California Military & Veterans Code § 295.02

“Every officer and employee of a public agency who is on military leave other than temporary military leave of absence who has been in the service of such public agency for a period of not less than one year immediately prior to the date on which the absence begins shall be entitled to receive his salary or compensation as such officer or employee for the first 30 calendar days while engaged in the performance of ordered military duty. . . .”

b. California Military & Veterans Code § 395.01(a)

“Any public employee who is on temporary military leave of absence for military duty ordered for purposes of active military training, inactive duty training, encampment, naval cruises, special exercises, or like activity as such member, provided that the period of ordered duty does not exceed 180 calendar days including time involved in going to and returning from the duty, and who has been in the service of the public agency from which the leave is taken for a period of not less than one year immediately prior to the day on which the absence begins, is entitled to receive his or her salary or compensation as a public employee for the first 30 calendar days of any such absence. Pay for those purposes may not exceed 30 days in any one fiscal year. . . .”

D. Paid Judicial Leave when serving on jury duty: CBA Articles 20.1, 20.2, 20.3, 20.4

E. Paid Absence as a Witness “in the interest of the CSU”: CBA Articles 20.6, 20.7

F. Paid Organ and Bone Marrow Donor Leave: CBA Article 20.15

Thirty (organ donor) or five (bone marrow donor) consecutive calendar days if “there is a medical necessity for the donation” *and* donor has “exhausted all available sick leave.”

V. Unpaid Leaves

A. Family and Medical Leave (“FML”): up to 12 weeks every 12 months for employees who have at least 12 months (or one AY) of service.

1. The CSU can “designate” leave taken for an “FML-qualifying event” as FML . . .

a. CBA Article 22.9

“An FML-qualifying event is the birth of a child of the employee; the placement of a child with an employee in connection with the adoption or foster care of the child by the employee; to care for a child, parent, spouse, or registered domestic partner of the employee who has a serious health condition; or for the employee’s own serious health condition.”

b. CBA Article 22.10

“When the appropriate administrator becomes aware that an employee has taken or intends to take time off for an FML-qualifying event as defined in Article 22.9, the employee may be asked to provide documentation from a medical professional asserting that there is an FML-qualifying reason. FML-qualifying leaves may be designated as FML.”

2. . . . but if you request vacation without reference to an “FML-qualifying purpose,” the CSU may *not* ask you whether the requested vacation is for such a purpose.

“If an employee asks to use vacation or other paid time off without reference to an FML-qualifying purpose, the CSU may not ask the employee if the leave is for an FML-qualifying purpose.”
CBA Article 22.15

3. You must use sick leave and vacation before going on any unpaid portion of FML.

a. CBA Article 22.17

“When FML is granted for an eligible employee’s own serious health condition, an employee shall use applicable leave credits, including sick leave, vacation, compensatory time off (CTO) and Personal Holiday before going on any unpaid portion of FML. However, if the leave is due to the employee’s own serious health condition and also qualifies as an Industrial Disability Leave (IDL) Temporary Disability, or Non-Industrial Disability Leave (NDI), the appropriate guidelines shall apply.”

b. CBA Article 22.18

“When FML is taken by an employee to care for an eligible family member, employees must utilize all accrued vacation, personal holiday, compensating compensatory time off (CTO) that he/she is eligible to take prior to utilizing any unpaid period of FML.”

Exercise 4: Karla Kraftig’s husband has been in a serious car accident and she needs to take time off to nurse him back to health. She has four weeks of sick leave and four weeks of vacation. She would like to save her sick leave and vacation and go on unpaid FML instead. Can she do so?

Exercise 5: Assume instead that Karla wants to save her unpaid FML leave and go on sick leave or vacation first. Can she do so?

B. Unpaid Pregnancy Disability Leave: up to four months that do *not* run concurrently with FML

“Family and medical leave are separate and distinct from the right of a female employee to take a pregnancy disability leave under Government Code Section 12945, subdivision (b) (2). If a female employee takes part or all of the maximum four (4) months of pregnancy disability leave, she may request up to twelve (12) weeks additional family care or medical leave for reason of the birth of her child, or due to her own serious medical condition. Any combination of family care or medical leave and pregnancy disability leave shall run concurrently with the period of parental leave available to a permanent employee pursuant to provision 22.5 of this Article.”

CBA Article 22.20

Exercise 6: Shana Shlaukopp is beginning the fifth month of a difficult pregnancy. Like Karla, she has four weeks of sick leave and four weeks of vacation. She needs to go on leave but wants to save her sick leave, vacation, and FML. Can she do so?

C. Unpaid Parental Leave: up to twelve months for permanent employees that run concurrently with FML.

1. CBA Article 22.5

“Parental leave shall refer to a leave for the purpose of a parent preparing for the arrival of a new infant and the care of a new infant.

A permanent employee is entitled to a parental leave without pay of up to twelve (12) months upon his/her written request, subject to the conditions of provision 22.12 of this Article. This leave shall satisfy the family care leave requirements of permanent employees for reason of the birth of a child of the employee, the placement of an infant child with an employee in connection with the adoption or foster care of the child by the employee, or to care for an infant child who has a serious health condition. At least thirty (30) days prior to the ending date of the leave, the employee shall inform the appropriate administrator in writing of his/her intention to return from leave. Changes in the terms of the leave may be made by mutual agreement of the appropriate administrator and the employee.”

2. CBA Article 22.6

“The amount of parental leave that may otherwise be granted under Article 22 may be reduced by the amount of FML granted to an eligible employee for reasons set forth in this Article.”

D. Unpaid Military Leave: up to twenty-six work weeks that run concurrently with FML.

4. CBA Article 22.31

“An eligible employee who is the spouse, registered domestic partner, son, daughter, parent or “next of kin” of an injured, covered service member is eligible for Service Member Care Leave pursuant to the Fiscal Year 2010 National Defense Authorization Act and related laws. Employees eligible for Service Member Care Leave are eligible for a total of twenty-six (26) work weeks of leave without pay, which includes Service Member Care Leave and the 12 weeks of leave available for any other FML-qualifying event within a 12 month period.”

2. CBA Article 22.32

“An eligible employee with family members in the regular Armed Forces, National Guard or Reserves is entitled to Military Exigency Leave pursuant to the Fiscal Year 2012 National Defense Authorization Act and related laws. Military Exigency Leave is FML for the purpose of addressing issues which may arise from a covered military member’s deployments or call to active duty to a foreign country. The length of time off from work varies under Military Exigency Leave based on type of leave taken and shall be deducted from the twelve (12) week FML entitlement.”

VI. Summary: Health-Related Leaves

Type of Leave	Handout Section	CBA Article	Paid	Duration	Must Use Sick Leave First	Runs Concurrently with Sick Leave	Runs Concurrently w/ FML
Sick Leave	III	19	Yes	Unlimited	N/A	N/A	Yes
Pregnancy Disability	V.B	22.20	No	4 Months	No	No	No
Parental A	IV.A	20.14	Yes	30 Days	No	No	Yes
Parental B	V.C	22.5-6	No	12 Months	No	No	Yes
Family & Medical	V.A	22.7-30	No	12 Weeks	Yes	Yes	N/A
Organ Donor	IV.F	20.F	Yes	30 Days	Yes	No	Maybe
Bone Marrow Donor	IV.F	20.F	Yes	5 Days	Yes	No	Maybe

VII. Answers to the Exercises

A. Exercise 1

Because Fritz Fleishig has more than ten years of service, he will be able to carry 440 hours of earned but unused vacation into 2014. By then, he will have earned another 64 hours of

vacation, for a total of 464 hours. Accordingly, he must submit a timely request to schedule at least 24 hours of vacation before the end of the year or forfeit them. The request must be to schedule these hours in October, November, and/or December, *i.e.*, “in the last quarter of the calendar year” (CBA Article 26.11). If the request is denied, he must make another request pursuant to CBA Article 26.11.A. By doing so, Fritz will avoid losing any of his vacation.

B. Exercise 2

By May 31, 2013, Max Milkhigh will have earned an additional 16 hours of vacation, for a total of 416 hours or 52 days. Moreover, because Max is being laid off, *i.e.*, “separate[ed] from service without fault on his/her part,” he will earn additional vacation on these 52 days. By “projecting the accumulated time on a calendar basis” as if Max had taken these 52 days of vacation in June 2013 (all twenty work days), July 2013 (all 22 work days), and part of August 2013 (first ten work days), he earns an additional 32 hours of vacation for these 52 days. (See CBA Article 26.5, which provides that “an employee who works eleven (11) or more days in a monthly pay period is considered to have completed a . . . month of service.) Accordingly, Max will be paid for 448 hours or 56 days of earned but unused vacation. If Max had been discharged for misconduct, *i.e.*, “separated from services through fault of [his] own,” he would be paid only for 416 hours or 52 days of earned but unused vacation.

C. Exercise 3

Under the Catastrophic Leave Donation Program, other employees may each donate a maximum of 40 hours of paid sick leave and/or vacation per fiscal year to employees such as Bertha who have exhausted their own sick leave, vacation, and compensatory time off due to catastrophic illness or injury. *See* CBA Article 19.24. Bertha may also be able to use unpaid Family Medical Leave. *See* Section V.A above.

D. Exercise 4

No. When Karla applies for FML, the CSU will require her to use her sick leave and vacation and will designate them as FML (*i.e.*, deduct them from the twelve weeks of FML she has available in this 12-month period). For example, if it takes Karla eight weeks to nurse her husband back to health and return to work, the CSU will require her to use her four weeks of sick leaves and two weeks of her vacation and designate them as FML, leaving her with no sick leave, two weeks of vacation, and no FML for the next ten months or so (*i.e.*, the remainder of the 12-month period that started when she went on leave).

E. Exercise 5

Perhaps. If Karla goes on sick leave, the CSU can ask for the reasons for same and will surely designate it as FML upon learning that Karla needs to take care of her injured husband. But if Karla goes on vacation without referring to her husband’s accident, then the CSU cannot ask her whether the vacation is for a “FML-qualifying purpose,” and if the CSU also does not otherwise learn about the true purpose of Karla’s vacation, it cannot designate it as FML.

F. Exercise 6

Yes. Shana should go on pregnancy disability leave. If she does so, she cannot be required to go on sick leave or vacation and her pregnancy disability leave also *cannot* be designated FML (i.e., deducted from the twelve weeks of FML she has available in this 12-month period). If she goes on unpaid parental leave instead, that leave *can* be designated as FML, leaving her with no FML for the remainder of the 12-month period that started when she went on leave. Finally, if she goes on sick leave and/or vacation instead, that leave again *can* be designated as FML.

VIII. Links

A. APC Homepage:

<http://www.apc1002.org/>

B. CSU “Time Off/Leave Of Absence Programs” Page:

http://www.calstate.edu/Benefits/leave_programs/leaves.page.shtml

Hint: Click on “Academic Support (Unit 4)” under “Benefits Summaries for Employee Category” to download an “Academic Support (Unit 4) Benefits Summary,” then refer to the last page for information about “Paid Leave” and “Unpaid Leave.”

C. CSU “Disability Programs” Page (Not Covered in this Handout):

<https://www.calstate.edu/benefits/disability/disability.page.shtml>

D. U.S. Department of Labor Wage and Hour Division FMLA Page:

<http://www.dol.gov/whd/fmla/>

Hint: Click on “FMLA Employee Guide (Spanish)” under “General Guidance,” then click on the button to the left of “Download the FMLA Employee Guide (English) in PDF format” or “Download the FMLA Employee Guide (Spanish) in PDF format” under “How to Get the FMLA Employee Guide.”

E. California Codes

The Education and Military & Veterans Code sections quoted above can be found here:

<http://www.leginfo.ca.gov/calaw.html>

The Code of Regulations sections quote above can be found here:

<http://government.westlaw.com/linkedslice/default.asp?Action=TOC&RS=GVT1.0&VR=2.0&SP=CCR-1000>