

**MARYLAND STATE DEPARTMENT OF EDUCATION
OFFICE OF HUMAN RESOURCES**

SUBJECT: SICK LEAVE POLICY

SECTION: HR – 5-G

PAGE: 1 of 10

EFFECTIVE: 7/1/13

APPROVED: Original Signed by Dr. Lillian M. Lowery, State
Superintendent

1. POLICY

- 1.1 It is the policy of the Maryland State Department of Education (MSDE) to provide uniform guidance and structure to its employees on Sick Leave benefits which ensure fair, equitable, and consistent application of laws, rules, and regulations pertaining to the use of Sick Leave.

2. PURPOSE

- 2.1 MSDE encourages its employees to follow an appropriate preventive health care regimen which can lead to a healthier workforce and ensure regular attendance at the workplace. Unscheduled absences, excessive sick leave usage and fraudulent sick leave usage unnecessarily increases overtime costs, exacerbates the workloads of other employees and negatively impacts morale.

3. APPLICABILITY

- 3.1 Sick Leave is granted pursuant to statute, based on the percentage of employment, to employees in budgeted positions who work at least 50% and is to be used on an as-needed basis to the extent earned.
- 3.2 The Family and Medical Leave Act apply to all eligible employees.
- 3.3 This policy contains information on the following segments:
- A. MSDE Standard Sick Leave includes the use of Sick Leave for the following reasons:
- Illness, disability, or medical appointment of employee or employee's immediate family member;
 - Birth of the employee's child;
 - Placement with the employee of a child for adoption; or
 - Death of an employee's immediate family member or relative.
- B. Family and Medical Leave Act is based on the Federal Family and Medical Leave Act (FMLA) allowing eligible employees a job-protected absence of up to 12 workweeks for the following reasons:
- Birth or placement of a child for adoption or foster care;

- The serious health condition of a child under age 18, or an adult child who cannot care for himself or herself;
- The serious health condition of a spouse or parent; or
- The employee’s own serious health condition that prevents the employee from performing the assigned job functions.

For additional information on the State’s FMLA policy, please refer to the Department of Budget and Management, Office of Personnel Services and Benefits Guide at www.dbm.maryland.gov.

- 3.4 The MSDE Office of Human Resources (OHR) will work to ensure the fair, equitable, and consistent application of this policy.
- 3.5 OHR will manage, track, and maintain records on all Sick Leave granted and used under this policy except by those employees assigned to the Division of Rehabilitation Services (DORS) and for which this responsibility has been delegated in writing to the DORS Human Resource Office (HRO). Such records will be used for the preparation of reports to the Department of Budget and Management, Office of Personnel Services and Benefits (OPSB) and for auditing purposes as required.

4. AUTHORITY

- 4.1 State Personnel and Pensions Article, Titles 2 and 9
- 4.2 Annotated Code of Maryland, Education Article
- 4.3 Code of Maryland Regulations 17.04.11 Leave
- 4.4 Department of Budget and Management, Office of Personnel Services and Benefits, Guidelines
- 4.5 Americans with Disabilities Act of 1990
- 4.6 C.B. signed January 9, 2008
- 4.7 Section 504 of the Rehabilitation Act of 1973 as amended
- 4.8 The Family and Medical Leave Act of 1993

5. DEFINITIONS

- 5.1 Absence - Any continuous period of paid and/or unpaid leave used for either an illness or disability of the employee or the employee’s immediate family member, regardless of duration, excluding absences for:
- Designated Family and Medical Leave Act (FMLA) reasons;
 - Death of an employee’s immediate family member or relative.

- 5.2 Acceptable Medical Documentation - Required for an absence of five or more consecutive workdays, an original certificate which authenticates an employee's period of illness or disability or the illness or disability of an employee's immediate family member. This certificate shall include the dates that the employee was unable to work due to the employee's own illness or disability or the need to care for an immediate family member, and a prognosis about the employee's ability to return to work. When applicable, this information, along with any other information required for Family and Medical Leave qualifying absences, shall be submitted on the Family and Medical Leave Certification of Health Care Provider (MS411). All medical documentation shall be signed by one of the following:
- A. A medical doctor authorized to practice medicine or surgery by the State in which the doctor practices;
 - B. If authorized to practice, performing in the scope of that authority, and relevant to the basis for the absence, one of the following:
 - A chiropractor;
 - A clinical psychologist;
 - A dentist;
 - A licensed certified social worker - clinical;
 - A certified nurse midwife;
 - A certified nurse practitioner;
 - An oral surgeon;
 - An optometrist;
 - A physical therapist; or
 - A podiatrist.
 - C. An accredited Christian Science practitioner; or
 - D. A health care provider as defined by the Federal Family and Medical Leave Act (FMLA).
- 5.3 Appointing Authority - For this policy, the State Superintendent of Schools has delegated responsibility to the Director of the Office of Human Resources.
- 5.4 Custodian of Records - The Chief of the Staff Employment Section of the OHR or designee responsible for the retention of official personnel, timekeeping, and medical records.
- 5.5 Exempt Classification - Those classifications designated by the Department of Budget and Management, Office of Personnel Services and Benefits (OPSB) as not eligible for cash overtime payment.
- 5.6 Federal Family and Medical Leave Act - A qualifying absence identified as job-protected to which eligible employees are entitled for up to a total of 12 workweeks in any 12-month-rotational period which may include paid and/or unpaid leave.

- 5.7 Illness or Disability - A physical or mental condition which renders the employee unable to perform the assigned duties and responsibilities and which causes the employee to be absent from work. Also, a physical or mental condition of an employee's immediate family member which causes the employee to be absent from work.
- 5.8 Immediate Family Member - Spouse; children, including foster and stepchildren; parents, stepparents or foster parents of the employee or spouse, or others taking the place of parents, and legal guardians of employee or spouse; brothers and sisters of employee or spouse; grandparents and grandchildren of employee or spouse; and other relatives living as a member of the employee's household.
- 5.9 Medical Appointment - A pre-scheduled date and time set for medical care that is part of an established treatment plan, or is of a routine, ongoing, preventive, or follow-up nature for an employee or a member of the employee's immediate family.
- 5.10 Modified Work Schedule - Any change to the employee's designated work schedule with the prior approval of the supervisor allowing the extension or reduction of the designated work hours on any given workday or within the standard workweek for employees in Nonexempt Classifications and within the pay period for employees in Exempt Classifications.
- 5.11 Nonexempt Classification - Those classifications designated by the Department of Budget and Management, Office of Personnel Services and Benefits as eligible for cash overtime.
- 5.12 Relative - Aunts, uncles, nieces, and nephews of employee or spouse; brothers-in-law and sisters-in-law of employee or employee's spouse; sons-in-law and daughters-in-law.
- 5.13 Serious and Prolonged Medical Condition under the State's Leave Bank Program and the State's Employee to Employee Leave Donation Program - A physical or mental impairment that substantially limits the ability of the employee to perform the essential functions of his/her job, which cannot be accommodated through reasonable accommodation.
- 5.14 Serious Health Condition under the Family and Medical Leave Act - An illness, injury, impairment, or physical or mental condition that involves inpatient care (an overnight stay) in a hospital, hospice, or residential care facility or continuing treatment by a health care provider. Otherwise, a period of incapacity must be for more than three consecutive calendar days and must involve treatments as specified in this policy, or any period of absence or incapacity due to certain conditions stated in this policy.
- 5.15 Sick Leave - Leave that is earned by employees, prorated based upon the percentage of employment, and is available for the following reasons:
- illness or disability of the employee;
 - for death, illness, or disability of a member of the employee's immediate family;
 - following the birth of the employee's child;
 - when a child is placed with the employee for adoption; or

- for a medical appointment of the employee or a member of the employee’s immediate family.

5.16 Supervisor - A person who assigns and reviews the work of others, trains employees, interviews and recommends selections, approves leave and signs Timekeeping Records, conducts and signs performance evaluations, and recommends hiring and disciplinary action.

6. POLICY CONTENTS

6.1 Purpose

The State of Maryland provides Standard Sick Leave for use by its employees to provide paid and/or unpaid leave for addressing medical needs of the employee and eligible immediate family members.

6.2 Earnings and Eligibility

- Starting with the first month of service, employees earn 1.5 hours of Sick Leave for each 26 hours worked, not to exceed 15 workdays in a calendar year.
- Unused Sick Leave is accumulated and available as needed and carries from one calendar year to the next without limitation.
- Current Maryland State employees transferring directly from one State agency to another are eligible to transfer their unused Sick Leave balance.
- Former State employees returning to State service within their reinstatement period are eligible to have their previous unused Sick Leave balance restored.
- Upon retirement from active State service, an employee will receive creditable service for unused Sick Leave in accordance with the formula that 22 days of unused Sick Leave equals one month of creditable service calculating an earning rate of 15 days for each full year of service.
- Upon any other separation from State service, the employee’s unused Sick Leave will be placed in the State Employees’ Leave Bank unless the employee objects.

6.3 Use

- An employee who is responsible for the care and nurturing of a child may use, without certification of illness or disability, up to 30 days of earned Sick Leave to care for the child during the period immediately following the birth of the employee's child or the placement of the child with the employee for adoption. If both parents are State employees, they may use a combined total of up to 40 days to provide such care, not to exceed 30 days for one parent.

- In the event of death in an employee's immediate family, a maximum of five workdays, depending on need, may be charged to earned Sick Leave and will not count as an absence. If additional time is required, other available paid leave may be used if approved by the supervisor who shall make reasonable efforts to arrange the employee's work to allow the employee to take other accrued leave for this purpose.
- In the event of the death of an employee's relative as defined in COMAR 17.04.11.06C, a maximum of one day may be charged to Sick Leave. If additional time is required, other available paid leave may be used if approved by the supervisor who shall make reasonable efforts to arrange the employee's work to allow the employee to take other accrued leave for this purpose.
- To the extent possible, the use of leave under the Standard Sick Leave Program should be requested as far in advance as possible to permit the supervisor to schedule appropriate coverage wherever necessary.
- To the extent possible and depending upon the need of the Division/Office, employees and their immediate supervisors may negotiate either of the following alternatives to using leave. The use of either alternative requires the prior approval of the immediate supervisor and the Division/Office Head or designee.
 1. All employees are eligible to modify their work hours on any given workday upon appropriate approval by their supervisor.
 2. Employees in Nonexempt Classifications are eligible to modify their work hours within a workweek, and employees in Exempt Classifications are eligible to modify their work hours within the pay period.
- Unless otherwise specified in policy, for specific MSDE facilities an employee must contact the supervisor 15 minutes prior to the employee's designated start time to provide information concerning Sick Leave usage.
 1. When an employee is unable to work due to circumstances provided under the definition of Sick Leave, the employee or employee's designee will notify his/her immediate supervisor or designee as outlined above, unless extenuating circumstances preclude this notification. When an employee calls in accordance with established practice or policy, he/she shall leave a message if the supervisor or supervisor's designee is unavailable, or the Employer may instruct the employee to call a secondary number, and the employee will not be required to call back.
 2. The employee or designee must call each day of absence until the employee notifies the employer of a date he/she will return to duty. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law.

- If an illness or disability of one day or more occurs during a period of Annual or Personal Leave and acceptable medical documentation is provided, the employee shall be granted Sick Leave for the documented period.

6.4 Documentation

- A planned absence for the use of Sick Leave under the Standard Sick Leave Program requires the written authorization of the supervisor as far in advance as possible but at least 24 hours prior to the appointment.
- For an absence exceeding 30 calendar days, medical documentation may be required at least monthly.
- For the purpose of absences of less than five consecutive days, acceptable documentation may consist of a certificate from a health care provider that the employee (or member of the employee's immediate family) was unavailable for duty on the day or dates of absence. For absences of four hours or less, at the employee's option, he or she may submit a copy of the universal health insurance claim form or similar document from the health care provider's office showing the name of the provider, the date of treatment and address and telephone number of the provider.
 1. An employee who works less than his/her full work day due to having to provide care to the employee's child or member of his/her immediate family shall not be required to provide certification from an acceptable health care provider unless management has a basis to believe sick leave is being used for a purpose other than intended. Sick leave use in such circumstances shall not count as an occurrence.
- Acceptable medical documentation shall be required for use of Sick Leave and for the employee to return to work for absences of five or more consecutive workdays and shall support the period of absence.
- This documentation must be an original certificate which supports the period of illness or disability, includes a prognosis about the employee's ability to return to work, and is signed by an authorized health care provider as defined in the FMLA.
- Medical documentation is required to charge Sick Leave for an illness or disability which occurred during a period of Annual or Personal Leave.
- Medical documentation is maintained separately from the official Personnel Record and is kept confidential in accordance with federal and State law.

6.5 Records

- All Sick Leave taken, including any taken for a death in the family, shall be appropriately coded on the Timekeeping Record.

- Employees are encouraged to routinely check and compare their leave balances appearing on each Timekeeping Record and to contact OHR should a discrepancy be discovered. Otherwise, after the Timekeeping Record has been submitted to OHR, Sick Leave may not be changed to another type of leave without the approval of the supervisor and the Director of OHR.
- Sick Leave for employees and family members will not be tracked separately.
- Supervisors, upon signing an employee's Timekeeping Record, are assuring that use of Sick Leave is accurately recorded as reported by the employee and, when required, the appropriate medical documentation is attached.
- Sick Leave used for any purpose other than illness or disability is to be recorded as Sick Leave using the appropriate identifying Code.

OHR maintains all relevant data on Sick Leave usage for OPSB reporting requirements as well as auditing purposes.

6.6 Documented Sick Leave

Any sick leave that is used and has a doctor certification.

6.7 Undocumented Sick Leave

- Any sick leave that is used and has no doctor certification.

Doctor certification may be required under any of the following conditions:

1. When an employee has a consistent pattern of maintaining a zero or near-zero sick leave balance without documentation of the need for such relatively high utilization;
2. When an employee has 6 or more occurrences of undocumented sick leave usage within a 12 month period. Sick leave use that is certified in accordance with this policy shall not be considered as an occurrence.
3. After the first instance of an employee being absent for more than 4 consecutive days without documentation. The employee may be placed on notice that future absences of more than 3 days in a 12 month calendar year will require documentation. On the 5th undocumented absence, the employer must give an oral counseling to the employee that future undocumented absences may trigger a requirement for certification. This certification shall be for six months.
4. Employees who suffer from chronic or recurring illnesses or disabling conditions that do not require a visit to a health care provider each time the condition is manifested, shall not be required to provide certification for each absence, provided that a general certification is provided, unless the

absence is for five (5) or more consecutive days. Such frequent absences also shall not be used as the basis for a certification requirement.

5. Unless the employee has a condition identified as a permanent disabling condition, the Employer may require certification and follow-up reports from a health care provider no more frequently than every six (6) months of the continued existence of the chronic condition.
6. Failure to provide a certification for absences of more than 5 days will result in all days being counted as Absence Without Leave.

6.8 Counseling

- Verbal counseling should be given after the fifth undocumented occurrence.
- After the fifth undocumented occurrence, the employee will be notified in writing that the next undocumented occurrence will invoke a medical certification requirement for each future use of sick leave. Prior to placing an employee on a one-day medical certificate requirement for this reason, a memo must be issued to document this oral counseling, signed by the employee, and forwarded to OHR or DORS HRO for placement in their official personnel file.
- On the sixth undocumented occurrence, the employee will be notified by written counseling memo of the initiation of the medical certification requirement for each future use of sick leave (the medical certification requirement is for six months and can be extended for an additional six months if no improvement has been made by the employee). This memo will also be forwarded to OHR or DORS HRO to be placed in the employee's official personnel file.
- Supervisors and Managers have a responsibility to monitor their employee's use of documented and undocumented leave, especially if there is a concern of sick leave abuse. Attendance may improve through the following actions:
 - a. Counseling.
 - b. Placement on a medical certification requirement.
 - c. The Employee Assistance Program.
 - d. Evaluation by the State Medical Director.
 - e. Progressive Discipline.

6.9 Disciplinary Actions

- An employer may take appropriate disciplinary action against an employee for using sick leave for purposes other than described in law, regulation, this policy or an applicable MOU for:

1. failing to properly notify the Employer of the use of sick leave; or
 2. failing to provide appropriate documentation when properly required to do so.
- The employer may not penalize an employee with regard to scheduling, overtime eligibility, performance evaluations, or other right or benefit for sick leave usage for being subject to a documentation requirement.
 - This does not preclude appropriate disciplinary action for use of sick leave for purposes other than described in 5.15.

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1. GUIDELINES

- 1.1 The Office of Personnel Services and Benefits (OPSB) within the Department of Budget and Management and the Maryland State Department of Education (MSDE) has adopted regulations for the implementation and management of the State of Maryland's Sick Leave Programs.
- 1.2 Regulations require MSDE to manage the earning, use, and reporting of Sick Leave for the qualifying reasons used by employees for both themselves and their immediate family members under Standard Sick Leave.
- 1.3 The Employee Relations Section of the Office of Human Resources (OHR) is responsible for these requirements for all employees using Sick Leave.

2. APPLICABILITY

- 2.1 This procedure applies to all eligible employees in budgeted positions within the Maryland State Department of Education.

3. PROCEDURAL STEPS

Required to assure that employee Sick Leave usage is implemented appropriately.

- 3.1 For planned absences, a **Request for Leave** (Form SMF-16 or an electronic version) should be completed and submitted to the supervisor in advance for approval by the end of the day of the employee's previous shift, except for 24 hour facilities which should be submitted 24 hours in advance.
- 3.2 Sick Leave usage must be recorded on the employee's **Timekeeping Record**.
- 3.3 Sick Leave absences due to an illness of an employee or members of the employee's immediate family must be appropriately coded.
- 3.4 Employees who have exhausted Sick Leave and used other paid or unpaid leave for themselves or their immediate family members qualifying under Standard Sick Leave should indicate in the Comment Section of the **Timekeeping Record** that the leave was used for a purpose for which Sick Leave would be appropriate.
- 3.5 Medical documentation to authenticate an employee's use of Sick Leave is to be submitted to the employee's supervisor and forwarded to OHR or Division of

Rehabilitation Services (DORS) Human Resource Office (HRO) along with the employee's **Timekeeping Record**. If the employee desires, the medical documentation may be submitted to the supervisor in a sealed envelope marked "confidential" and submitted to OHR or DORS HRO for verification along with the Timekeeping Record. In such instances, OHR and DORS HRO will verify the approval, or the disapproval, with the supervisor and the employee.

- 3.6 Sick Leave used in the event of a death in the family shall be reported on the **Request to Charge to Earned Sick Leave Absence Due to Death in Family** (Form LV-1). The Request Form must be signed by the employee, authorized by the supervisor, and submitted to OHR along with the employee's **Timekeeping Record**.

4. **RECORDS**

- 4.1 OHR will maintain records in the designated format on the management and monitoring of and compliance with all regulations pertaining to activity under MSDE Standard Sick Leave for OPSB reporting requirements and auditing purposes.

5. **REQUIRED FORMS**

For all qualifying employees:

- 5.1 **Timekeeping Record**
- 5.2 **Request for Leave** (SMF-16)
- 5.3 **Request to Charge to Earned Sick Leave Absence Due to Death in Family** (Form LV-1)