

**EMPLOYEE LEAVE LAWS
For Alabama Public School Employees**

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EMPLOYEE LEAVE LAWS For Alabama Public School Employees

Sick Leave

State laws for sick leave for employees of local boards of education are contained in Title 16, Chapter 1, Section 16-1-18.1 of the Code of Alabama (last amended by Act No. 2012-376). This law also covers two-year postsecondary institutions and some other agencies. In addition to sick leave, this law includes provisions for *on-the-job injury*, *vacations*, and *leaves of absences*. A summary of the sick leave provisions of this law follows:

1. The law covers full-time employees and adult bus drivers.
2. An employee earns one day per month of employment.
3. An employee is allowed to accumulate an unlimited number of sick leave days.
4. An employee may transfer earned and unused sick leave from one employer (as defined by this law to include four year public institutions of higher learning) to another.
5. Sick leave is defined as the absence from duty by an employee as a result of any of the following:
 - a) Personal illness or doctor's quarantine.
 - b) Incapacitating personal injury.
 - c) Attendance upon an ill member of the employee's immediate family (parent, spouse, child, foster child currently in the care and custody of the employee, sibling); or an individual with a close personal tie.
 - d) Death in the family of the employee (parent, spouse, child, sibling, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, nephew, niece, grandchild, grandparent, uncle or aunt).
 - e) Death, injury, or sickness of another person who has unusually strong personal ties to the employee, such as a person who stood in loco parentis.

[NOTE: PROVISIONS FOR THE PAYMENT OF UNUSED SICK LEAVE TO THE BENEFICIARY OR ESTATE OF A DECEASED EMPLOYEE ARE CONTAINED IN §16-1-18.2].

Brief descriptions of selected legal opinions relating to sick leave are shown below. Although some of the opinions were issued when a maximum sick leave accumulation limit was in effect or the laws cited are prior to the creation of §16-1-18.1, the legal interpretations are still applicable.

- 1) An employee may not transfer sick leave to another employee for the purpose of converting such sick leave into retirement credit. AG Opinion 93-00270 [Jun.21, 1993]
- 2) An employee that holds two different full time positions with the local board of education earns sick leave for each position. AG Opinion 85-00427 [Jul. 8, 1985]
- 3) A board of education has no authority to pay employees for unused sick leave. AG Opinion 84-00392 [Aug. 13, 1984]
- 4) An employee continues to earn sick leave while on sick leave or authorized leave with pay. State Department of Education, Office of General Counsel [April 1, 1987]
- 5) A board of education should enforce a policy that allows sick leave to be used only in those instances allowed by state law. AG Opinion 99-00208 [May 24, 1999]
- 6) A local board of education may require a doctor's excuse or other justification only if there is probable cause to believe that sick leave is being abused or misused by an employee. AG Opinion 99-00208 [May 24, 1999]

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Personal Leave

State laws for personal leave for employees of local boards of education are contained in Title 16, Chapter 8, Section 16-8-26 of the Code of Alabama (last amended by Act No. 97-444). This law also covers two-year postsecondary institutions and certain other agencies. A summary of the provisions of this law follows:

1. This law covers any certificated employee and those support employees who work an average of at least 20 hours a week.
2. A board of education may grant up to 5 days, but not less than 2 days, of personal leave each year.
3. An employee is entitled to full pay for at least two of the personal leave days used during the scholastic year.
4. A board of education may decide to grant additional personal leave days (not to exceed 5 days total) and may decide whether additional personal leave days are at full pay, partial pay, or without pay.
5. Personal leave is noncumulative (unused days do not carry-forward to the next school year).
6. A teacher or support employee may convert unused personal leave to sick leave at the end of the school year if the unused personal leave days are funded (full pay or partial pay) by state or local funding.
7. A teacher may choose to be paid at the end of the school year for unused personal leave days at the same daily rate paid to substitute teachers if the unused personal leave days are funded (full pay or partial pay) by state or local funding.
8. A teacher or support employee cannot be required to disclose their reasons for requesting personal leave.

Brief descriptions of selected legal opinions relating to personal leave are shown below. Although some of the opinions were issued prior to Act No. 97-444, the legal interpretations are still applicable.

- 1) A teacher who chooses to be paid for unused personal leave is to be reimbursed at the highest daily rate paid to substitute teachers.
AG Opinion 85-00175 [Jan. 25, 1985]
- 2) A board of education is not required to grant the same number of personal leave days to support employees that the local board grants to teachers.
AG Opinion 98-00175 [Jun.30, 1998]
- 3) A board of education is not required to reimburse support employees for unused personal leave days.
AG Opinion 98-00175 [Jun.30, 1998]
- 4) Personal leave days are considered funded even though the employee must pay the cost of a substitute to receive the additional personal leave days.
AG Opinion 98-00175 [Jun.30, 1998]
- 5) A board of education cannot deduct the cost of a substitute at the time personal leave days are converted to sick leave.
AG Opinion 98-00175 [Jun.30, 1998]
- 6) A board of education cannot create a category of bereavement leave for its employees in addition to the days allowed for personal leave.
AG Opinion 99-00020 [Oct.22, 1998]

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Sick Leave Banks

State laws for sick leave banks for employees of local boards of education are contained in Title 16, Chapter 22, Section 16-22-9 of the Code of Alabama (last amended by Act No. 99-581). Act No. 99-581 made significant changes in the operation of sick leave banks. Local boards of education operating sick leave banks prior to the 1999 law are required to change their policies regarding sick leave banks in order to comply with the 1999 law. This law also covers two-year postsecondary institutions and other agencies. In addition to sick leave banks, this law includes provisions for the operation of catastrophic sick leave. A summary of the sick leave bank provisions of this law follows:

1. The law covers full-time and part-time employees of local boards of education, Alabama Institute of Deaf and Blind, Department of Youth Services School District, Alabama School of Fine Arts, Alabama High School of Mathematics and Science, two-year postsecondary institutions, and Alabama A& M University.
2. Upon the request 10% or more of its full-time certificated and full-time support personnel, a local board of education will establish a sick leave bank plan for each of the two groups either jointly or separately.
3. Employees of the local board of education will vote by secret ballot to determine whether to have a joint sick leave bank or to have separate sick leave banks.
4. Each sick leave bank will have a sick leave bank committee consisting of five employees.
5. The local superintendent will appoint an employee (to be approved by the local board of education) to serve as one sick leave bank committee member.
6. The members of each sick leave bank will elect (by secret ballot at the beginning of each scholastic year) four of its members to serve a one year term on the sick leave bank committee. No member can serve on the committee for longer than 5 years.
7. The sick leave bank committee will write the guidelines for the operation of the sick leave bank.
8. The sick leave bank committee may adopt appropriate and beneficial guidelines in addition to the regulations contained in Section 16-22-9, if the additional guidelines do not conflict with this section of the law.
9. The guidelines developed by the sick leave bank committee 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 prerequisite number of sick leave days.
10. The guidelines developed by the sick leave bank committee must establish an equal number of sick leave days (not to exceed five days) for deposit by each participating employee in order to become a member of the sick leave bank.
11. The guidelines developed by the sick leave bank committee are to be approved by a secret ballot vote of the participating members of the sick leave bank.
12. The sick leave bank committee will develop the forms and administrative procedures for the sick leave bank.
13. The sick leave bank committee will investigate any alleged abuse of the sick leave bank.
14. Sick leave days can only be used for the reasons stated in Section 16-1-18.1.

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Sick Leave Banks (continued)

15. Employee membership in the sick leave bank is voluntary.
16. The revised law contains a provision that allows a new employee of a local board of education 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 sick leave bank, the appropriate number of sick leave days will be credited (advanced) to the new employee as the deposit to join the sick leave bank. *(The credit balance will be reduced by one day each month as the sick leave days are earned by the employee. After the credit balance is reduced to zero, sick leave days earned by the employee will be used to repay any outstanding loan to the sick leave bank.)*
17. A participating member of a sick leave bank whose sick leave has been exhausted may borrow days from the sick leave bank.
18. An employee cannot owe more than 15 days to the sick leave bank, unless over 50 percent of the members of the sick leave bank vote to extend the limit.
19. Days are to be repaid to the sick leave bank by the borrowing member monthly, as the sick leave day is earned each month by the employee.
20. Upon the resignation or termination of an employee who owes days to the sick leave bank, the value for each of the owed days will be deducted from the final paycheck at the employee's current daily rate of pay.
21. Upon the transfer of a sick leave bank member, the days the employee has on deposit in the sick leave bank are withdrawn from the bank and transferred with the employee.
22. Upon the retirement of a sick leave bank member, the days the employee has on deposit in the sick leave bank are withdrawn from the bank and made accessible for retirement credit.

[NOTE: ALTHOUGH THIS ACT APPEARS TO INCLUDE PART-TIME EMPLOYEES AS ELIGIBLE TO JOIN THE SICK LEAVE BANK, THE PROVISIONS FOR SICK LEAVE CONTAINED IN §16-1-18.1 EXCLUDE PART-TIME EMPLOYEES.]

Brief descriptions of selected legal opinions relating to sick leave banks are shown below. Although some of the opinions were issued prior to Act No. 99-581, the legal interpretations are still applicable.

1) A member of a sick leave bank can give only the number of days to the sick leave bank allowed by law.

AG Opinion 2000-200 [August 2, 2000]

2) If the final paycheck does not cover the value of the days owed to a sick leave bank when the employee leaves the school system, the local board of education must exercise due diligence and appropriate procedures to collect the debt. If the debt cannot be collected, it becomes a loss to the sick leave bank.

AG Opinion 86-0002-1 [October 24, 1985]

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Catastrophic Sick Leave

State laws for catastrophic sick leave for employees of local boards of education are contained in Title 16, Chapter 22, Section 16-22-9 of the Code of Alabama (last amended by Act No. 99-581). This law also covers two-year postsecondary institutions and other agencies. In addition to catastrophic sick leave, this law includes provisions for the operation of sick leave banks. A summary of the catastrophic sick leave provisions of this law follows:

1. The law covers full-time and part-time employees of local boards of education, Alabama Institute of Deaf and Blind, Department of Youth Services School District, Alabama School of Fine Arts, Alabama High School of Mathematics and Science, two-year postsecondary institutions, and Alabama A& M University.
2. An employee must be a member of a sick leave bank to donate or receive catastrophic sick leave days.
3. A catastrophic illness is defined as *"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."*
4. Each sick leave bank committee is responsible for writing guidelines and administrative procedures for catastrophic sick leave.
5. An employee must exhaust all sick and personal leave days before using catastrophic sick leave days.
6. An employee must borrow and utilize days from the sick leave bank (up to a maximum of 15 days) before being eligible to use catastrophic sick leave days.
7. Donated catastrophic sick leave may be used to repay days owed to a sick leave bank.
8. Sick and personal leave days earned while the employee is utilizing catastrophic sick leave days must be exhausted before continuing the use of catastrophic sick leave days.
9. An employee may use catastrophic sick leave days for a catastrophic illness for himself or herself or for the following covered persons: *parent, spouse, child, foster child currently in the custody and care of the employee, sibling, or an individual with a close personal tie.*
10. A sick leave bank member 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 against a catastrophic illness.
11. The employee donating sick leave for a catastrophic illness does not have to be a member of the same sick leave bank as the recipient employee.
12. The employee donating sick leave for a catastrophic illness cannot be required to donate a minimum number of days.
13. The donated catastrophic sick leave days revert to the donating employee only if the recipient employee does not use all of the donated days.
14. The sick leave bank committee will adopt guidelines for reverting unused donated days to the employees who donated the days.

[NOTE: ALTHOUGH THIS ACT APPEARS TO INCLUDE PART-TIME EMPLOYEES AS ELIGIBLE TO RECEIVE OR DONATE SICK LEAVE DAYS, THE PROVISIONS FOR SICK LEAVE CONTAINED IN §16-1-18.1 EXCLUDE PART-TIME EMPLOYEES.]

A brief description of a legal opinion relating to catastrophic sick leave is shown below:

- 1) 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.
State Department of Education, Office of General Counsel [December 13, 2000]

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On-the-Job Injury

State laws for *on-the-job injury* for employees of local boards of education are contained in Title 16, Chapter 1, Section 16-1-18.1 of the Code of Alabama (last amended by Act No. 2001-671). This law also covers two-year postsecondary institutions and some other agencies. In addition to *on-the-job injury*, this law includes provisions for sick leave, vacations, and leaves of absences. A summary of the *on-the-job injury* provisions of this law follows:

1. The law covers full-time employees and adult bus drivers.
2. An *on-the-job injury* is 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.
3. 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.
4. In the event the employee is clinically unable to report the injury, the notification procedures of the local board of education shall permit the reporting of the injury by another person who is reasonably knowledgeable to make the notification of the injury.
5. The local board of education will establish procedures and forms for notification of on-the-job injuries.
6. Within 30 calendar days of notification of the injury, the local superintendent of education (or designee) will inform the employee injured on the job about the local board of education's approved policies for on-the-job injuries and the employee's rights to request reimbursement from the State Board of Adjustment.
7. The local board of education 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.
8. The local superintendent of education may require a second opinion from another physician at the expense of the local board of education.
9. The local board of education may require a statement from the physician that there is a reasonable expectation that the employee will be able to return to work.
10. If the local superintendent of education 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 and absence from work resulting from the injury.
11. Sick leave days will not be deducted for the days the employee is paid for an absence approved for on-the-job injury pay.
12. A local board of education may adopt a policy to extend the 90-day period for on-the-job injuries.
13. A local board of education may request reimbursement for the cost of substitutes for the employee injured on the job. The reimbursement request is limited to 90 days for each approved on-the-job injury at the daily substitute rate (currently \$60) funded in the annual budget act. The State Department of Education will reimburse the local board of education if the Legislature provides funds for the reimbursement in the annual budget act.
14. 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's policies, rules, and regulations.

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Leaves of Absences

State laws for paid leaves of absences for employees of local boards of education are contained in Title 16, Chapter 1, Section 16-1-18.1 of the Code of Alabama (last amended by Act No. 2001-671). This law also covers two-year postsecondary institutions and some other agencies. In addition to paid leaves of absences, this law includes provisions for sick leave, vacations, and on-the-job injury. Provisions for unpaid leaves of absences for teachers are contained in Title 16, Chapter 24C, Section 16-24C-13 of the Code of Alabama. A summary of the provisions of these laws for *leaves of absences* follows:

1. Full-time employees and adult bus drivers may be paid for *leaves of absences*.
2. The local board of education may provide paid *leaves of absences* for training while schools are in or out of session.
3. The local board of education may provide paid *leaves of absences* when approved by the State Board of Education as beneficial to the state's educational objectives.
4. The local board of education may provide a paid *leave of absence* when the employee is absent for an unavoidable cause (other than sickness) when school is in session.
5. The pay for an absence resulting from an unavoidable cause other than sickness cannot be for a longer time than one week during a scholastic year.
6. The local board of education may grant an unpaid leave of absence for good cause to a teacher for a period of one year.
7. The local board of education may extend the unpaid leave of absence for a valid reason to the teacher for one additional year.
8. The unpaid leave of absence granted by the local board of education will not impair the continuing service status of the teacher.

A brief description of a legal opinion relating to a paid *leave of absence* is shown below:

- 1) An employee continues to earn sick leave while on sick leave or authorized leave with pay. State Department of Education, Office of General Counsel [April 1, 1987]

Vacations

State laws for paid vacations for employees of local boards of education are contained in Title 16, Chapter 1, Section 16-1-18.1 of the Code of Alabama (last amended by Act No. 2001-671). This law also covers two-year postsecondary institutions and some other agencies. In addition to paid vacations, this law includes provisions for sick leave, paid leaves of absences, and on-the-job injury. A summary of the vacation leave provisions of this law follows:

1. The law covers full-time employees and adult bus drivers.
2. The local board of education may adopt policies and procedures to provide paid vacations to employees

A brief description of a legal opinion relating to a paid vacation is shown below:

- 1) An employee continues to earn sick leave while on sick leave or authorized leave with pay. State Department of Education, Office of General Counsel [April 1, 1987]

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Military Leave

State law for paid military leave for employees of local boards of education is contained in Title 31, Chapter 2, Section 31-2-13 of the Code of Alabama.

[Congress provided clear protection for all members of the uniformed services, including non-career National Guard and Reserve members, with the October 1994 passage of the Uniformed Services Employment and Reemployment Rights Act USERRA, Chapter 43 of Title 38, U. S. Code. 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.]

1. Employees are provided pay for time away from work for federal military leave for no more than 168 working hours per calendar year.
2. Employees are provided pay for time away from work for state military leave (called by the Governor to duty in the active service of the state) for no more than 168 working hours at any one time.
3. 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.

Additional state laws providing payment for employees of local boards of education called into active military service during the war on terrorism are contained in Title 31, Chapter 12, of the Code of Alabama. (See Military Leave Differential Pay)

Brief descriptions of selected legal opinions relating to military leave are shown below. Although some of the opinions were issued prior to Act No. 95-256, the legal interpretations are still applicable.

- 1) 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 duties of the employee.
AG Opinion 86-00174 [March 4, 1986]
- 2) A local board of education may not restrict the taking of military leave for non-required duty or training. AG Opinion 86-00174 [March 4, 1986]
- 3) A local board of education may not condition continued employment on the employee's foregoing military leave. AG Opinion 90-00318 [June 28, 1990]
- 4) A local board of education may not deduct an amount equivalent to the compensation earned from the military during the time the employee is on military leave.
AG Opinion 90-00318 [June 28, 1990]
- 5) 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.
AG Opinion 99-00240 [July 7, 1999]
- 6) A local board of education cannot interfere with any employee's right to join the reserves or guard or interfere with the employee's membership in the reserves or guard.
AG Opinion 2002-090 [December 11, 2001]

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Military Leave Differential Pay

State law for military leave differential pay for employees of local boards of education, called into active service during the war on terrorism, is contained in Title 31, Chapter 12, Sections 31-12-1 through 31-12-10 of the Code of Alabama (Act No. 2002-430).

[Congress provided clear protection for all members of the uniformed services, including non-career National Guard and Reserve members, with the October 1994 passage of the Uniformed Services Employment and Reemployment Rights Act USERRA, Chapter 43 of Title 38, U. S. Code. 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.]

1. 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.
2. 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 not called into active service.
3. The Alabama Adjutant General will determine if the active military service qualifies for military leave differential pay.
4. 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.
5. Military leave differential pay is not subject to employer or employee TRS or FICA matching.
6. 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.

Brief descriptions of selected legal opinions relating to military leave differential pay are shown below.

- 1) Military pay in Act No. 2002-430 means basic pay and does not include special and incentive pays, allowances or other fringe benefits. AG Opinion 2002-270 [June 26, 2002]
- 2) 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 because he or she felt that his or her personal, family, and financial circumstances required him or her to take leave shall be restored pursuant to Act No. 2002-430. Once the service member has had leave restored one time, he or she is entitled to no subsequent restoration in the event the reservist again uses the leave that was restored. AG Opinion 2002-270 [June 26, 2002]
- 3) 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.

AG Opinion 2004-029 November 26, 2003