

TULARE/KINGS COUNTIES PERSONNEL COMMITTEE

Tulare County Office of Education

Redwood Room C, D, E, F

Friday, October 25, 2024

9:00 a.m. - 12:00 p.m.

❖ **Welcome**

❖ **New Teacher & Leadership Development**

9:05 - 9:10

- RICA

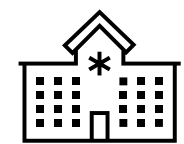
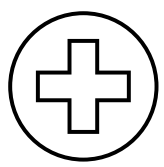
❖ **Worker's Compensation: Life of a Claim**

9:10 – 11:55

Andrea Lemm and Tony Zuniga

❖ **Wrap-up & Thank you**

- Next PC meeting will be held on Friday, February 7, 2025



Keenan

Workers' Compensation - Life of a Claim



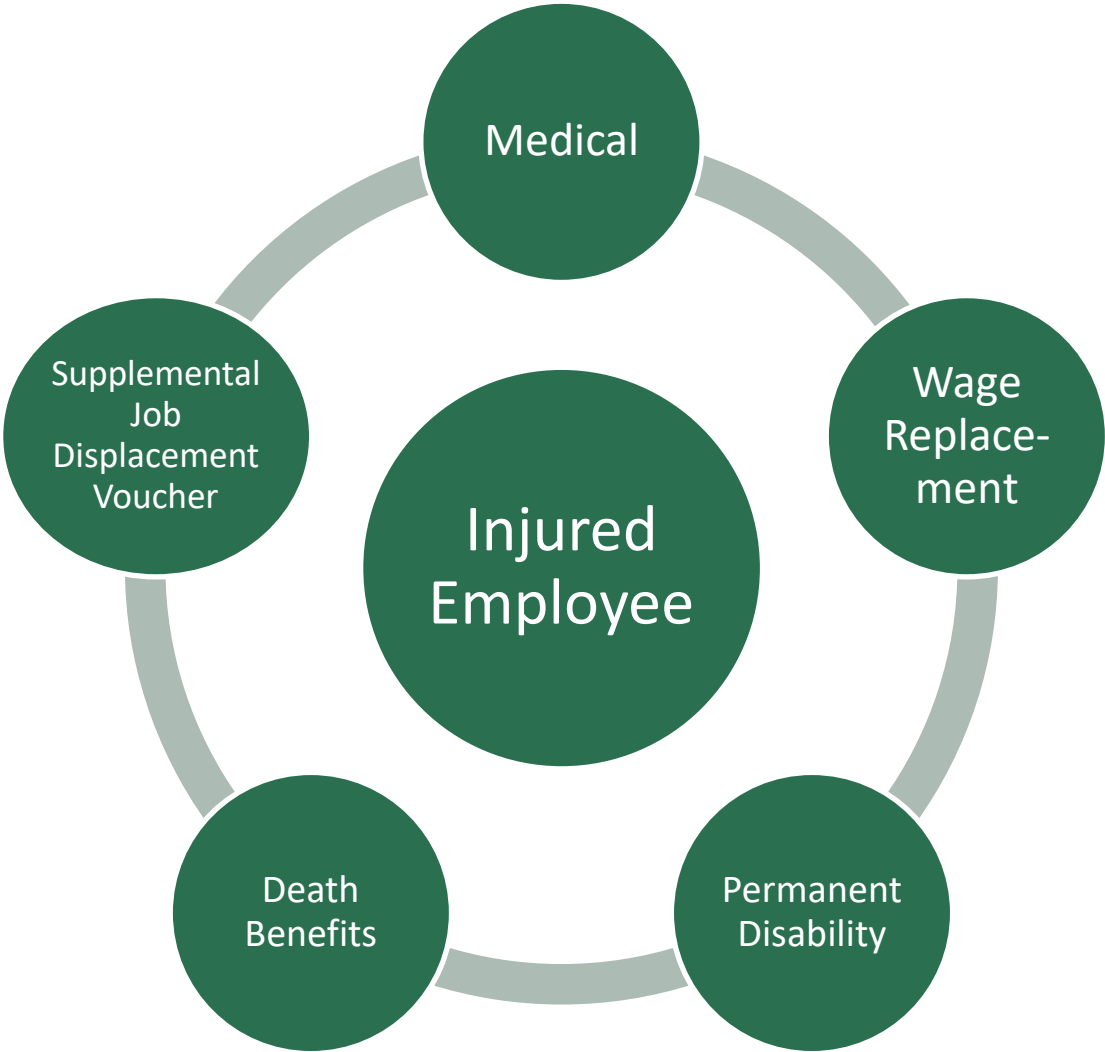
Legal Disclaimer

The discussion and materials provided by the presenter are for informational purposes only and no opinion, suggestion, or recommendation of the panel members, their entities or employees, shall constitute legal advice. Participants are advised to consult with their own attorney for a determination of their respective legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the participants' business activities. Furthermore, while the presenter hopes this information will help participants identify and mitigate liability exposures, neither they nor their entities or employees make any promise or representation that participants will recognize improved loss experience or premium savings as a result of any suggestion or recommendation made by the presenter. Information about COVID-19 is still rapidly changing. Schools should always refer to, and comply with any local Department of Health mandates, guidelines, and recommendations.

Workers' Compensation Benefits



Benefits Through CA Workers' Compensation System



Workers' Compensation Claim Form (DWC-1)

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION

Estado de California
Departamento de Relaciones Industriales
DIVISION DE COMPENSACION AL TRABAJADOR

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

FORMULARIO DE EMPLEADO PARA DE COMPENSACION DE TRABAJADOR (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and have needed information at (800) 726-7862. An explanation of workers' compensation benefits is included in the Notice of Potential Eligibility, which is the cover sheet of this form. Detach and save this section for future reference.

Empleado: Complete la sección "Empleado" y entregue la forma a su empleador. Quédese una copia y marque "Recibo Temporal del Empleado" hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar a la División de Compensación al Trabajador al (800) 726-7862 para un asesoramiento gratuito. Una explicación de los beneficios de compensación de trabajadores está incluida en la Notificación de Posible Elegibilidad que se le hace al momento de este formulario. Separe y guarde esta sección como referencia para el futuro.

You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedure to obtain them. You may receive similar notices from your employer or its claims administrator about your claim. If your claims administrator offers to send you notices electronically, and you agree to receive these notices only by email, please provide your email address below and check the appropriate box. If you later decide you want to receive the notices by mail, you must inform your employer or writing.

Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos. Es posible que reciba notificaciones similares de su empleador o del administrador de reclamos sobre su reclamo. Si su administrador de reclamos ofrece recibir notificaciones electrónicamente, y usted acepta recibir estas notificaciones solo por correo electrónico, por favor proporcione su dirección de correo electrónico abajo y marque la caja apropiada. Si usted decide después que quiere recibir las notificaciones por correo, usted debe de informarle a su empleador por escrito.

Do not provide this notice or copies to the media or LinkedIn. This is a confidential document. Do not post or share this information on social media, or otherwise disclose it to the public or a third party.

No proporcione esta notificación o copias a los medios de comunicación o LinkedIn. Este es un documento confidencial. No publique o comparta esta información en los medios de comunicación social, o de otra manera divulgue esta información al público o a un tercero.

Employee—complete this section and see notes above. Empleado—complete esta sección y vea la sección arriba.

- Name: Nombre _____ Today's Date, Fecha de Hoy _____
- Home Address, Dirección Residencial _____
- City, Ciudad _____ State, Estado _____ Zip, Código Postal _____
- Date of Injury, Fecha de la lesión (accidente) _____ Time of Injury, Hora en que ocurrió _____ a.m. _____ p.m.
- Address and description of where injury happened, Dirección/lugar donde ocurrió el accidente _____
- Describe injury and part of body affected, Describe la lesión y parte del cuerpo afectada _____
- Social Security Number, Número de Seguro Social del Empleado _____
- Check if you agree to receive notices about your claim by email only. Marcar si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico. Employer's e-mail _____ Correo electrónico del empleado _____
You will receive benefits notices by regular mail if you do not check, or you check additionally that you offer, an electronic service option. Usted recibirá notificaciones de beneficios por correo ordinario si usted no marca o si usted marca además la opción de servicio electrónico.
- Signature of employee, Firma del empleado _____

Employer—complete this section and see notes below. Empleador—complete esta sección y vea la sección abajo.

- Name of employer, Nombre del empleador _____
- Address, Dirección _____
- Date employer first knew of injury, Fecha en que el empleador supo por primera vez de la lesión o accidente _____
- Date claim form was provided to employer, Fecha en que se le entregó al empleado la presente _____
- Date employer received claim form, Fecha en que el empleado devolvió la presente al empleador _____
- Name and address of insurance carrier or adjusting agency, Nombre y dirección de la compañía de seguros o agencia administradora de seguros _____
- Insurance Policy Number, El número de la póliza de Seguro _____
- Signature of employer representative, Firma del representante del empleador _____
- Title, Título _____
- Telephone, Teléfono _____

Employee: You are required to date this form and provide copies to your insurer or claims administrator and to the employer, dependent or representative who filed the claim within **one working day** of receipt of the form from the employee.

Empleador: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que le ha presentado esta presente dentro del plazo de **un día hábil** desde el momento de haber sido recibida la forma del empleado.

MARKING THIS FORM IS NOT AN ADMISSION OF LIABILITY

EL FORMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD

Employee-employee del Empleado Employer-employer del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado

- Must be given to employee within one day of knowledge of the injury
- Employer complete lines 10-18
- Employee complete lines 1-9
- ****In their own handwriting**
- Line 16 should be left blank



Notifying CalOSHA

- Every employer shall immediately notify the local CalOSHA office for “serious” injuries within 8 hours.
- Injury requires inpatient hospitalization for other than medical observation or diagnostic testing, an employee suffers an amputation, the loss of an eye, or any serious degree of permanent disfigurement.



Failure to timely notify CalOSHA can result in a \$5,000 fine!!



Timely Reporting of Claims – Lag Time

Lag Time: The Cost of Late Reporting – Study* Found the Following:

- Claims reported within two weeks after occurring are 18% more costly than those reported in the first week.
- Claims reported in the third or fourth week after occurring, have average settlement values approximately 30% greater than those reported in the first week.
- Claims reported between the fourth and fifth week after occurring, have average settlement values 45% higher than those reported in the first week.

*Glen-Roberts Pitruzello, ACAS, The Hartford Financial Services Group for National Council on Compensation Insurance (NCCI) 2004

Types of Injuries

- Any injury or illness that “arises out of employment (AOE) and/or occurs in the course and scope of the employment (COE)” known as “AOE/COE”
- Specific Injuries (i.e. - slip and fall on wet floor in office)
- Occupational Diseases (i.e. - lung cancer for fireman, COVID19)
- Cumulative Trauma (i.e. - carpal tunnel syndrome from typing at a computer all day)
- Aggravations of pre-existing conditions (i.e. - A Child Nutrition Worker, who has an old back injury from playing football, lifts a box of beef patties at work and aggravates the old back injury)



Handling Disputed Injuries (Delayed Claims)

- Prompt reporting and investigation of a disputed or questionable WC claim is crucial
- The Claims Team must “Delay” a disputed claim within 14 days
- Medical treatment must be authorized up to \$10,000 until a decision is made to either accept or deny the claim
- TPA has 90 days from the date of notice to either accept or reject the claim. During this time the TPA may solicit additional information, including:
 - Past medical information/history
 - Copies of Personnel file
 - Statements from injured worker, their supervisor, witnesses
 - Information on past injuries including past insurance settlements
 - Panel Qualified Medical Evaluation
- Denial may not be the final resolution
- Litigation may result



Affirmative Defenses



Injuries that occur during work that are not compensable or they happened outside of the workplace are not in the course or scope of employment:

- Off-duty, recreational activities
- Intoxication
- Self-inflicted injuries
- Suicide
- Initial physical aggressor
- Injuries occurring during the commission of a crime
- Post termination mental stress claims

Claim Denial

- 3 legal reasons to deny
 - Factual denial
 - Legal denial
 - Medical denial
- Denial letter issued citing reasoning
- The employee can appeal our denial through the Workers' Compensation Appeals Board
- If claim proceeds to trial on compensability a WCAB Judge will issue a Findings and Award on compensability



Total Temporary Disability Benefits (TTD or TD)

- TD is wage replacement that is 2/3 of the employees' average weekly wage
- 3-day waiting period (WP), if off 14 days or longer, the 3-day WP is waived or reimbursed
- Maximum weekly benefit = \$1,539.71 (for DOI on or after 1/1/2022) **(include minimum too)**
- First payment due within 14 days
- 10% penalty may be due to the injured worker if paid late
- Education Code benefits may supplement the Labor Code min/max
- For injuries on or after 1/1/2008: There is an aggregate limit of 104 weeks of TTD owed within 5 years from the date of injury.

*****TD is a tax-free benefit*****

4850 Benefits for Safety Personnel

Temporary Partial/Total Disability (TPD/TTD)

- Public Safety Officers
 - Law Enforcement, Active Firefighting & Other Classifications
 - Clerical, Mechanical & Other Classifications Not Eligible
- L.C. 4850 Benefits
 - Full Salary in lieu of TD for One Year-Aggregate Basis
 - Based on Current Salary – Does Not Include:
 - Paid Vacation Time
 - Overtime
 - Time and a Half for Holidays
 - Incentive Pay



Permanent Disability Benefits (PD)

Compensates injured worker for loss of earning capacity due to an injury

- Benefit is paid at 2/3 of the employee's average weekly wage (minimum PD benefit is \$160.00 per week and maximum benefit is \$290.00 per week)
- 10% penalty is owed to the injured worker if the benefit is paid late
- A "Rating" of the doctor's final medical report is used to calculate the percentage of permanent disability owed
- Percentage of permanent disability is equivalent to a specific number of weeks



What is Utilization Review?

Medical care in the State of CA is subject to Utilization Review process.

- Review of treatment requests to ensure request is appropriate given the injury
- Care request is reviewed by a Nurse referencing against the MTUS Guidelines (Medical Treatment Utilization Schedule)
- Request from physician must be addressed in 5 days with additional time allowed for missing information
- Can be objected to by the employee with additional process to go through



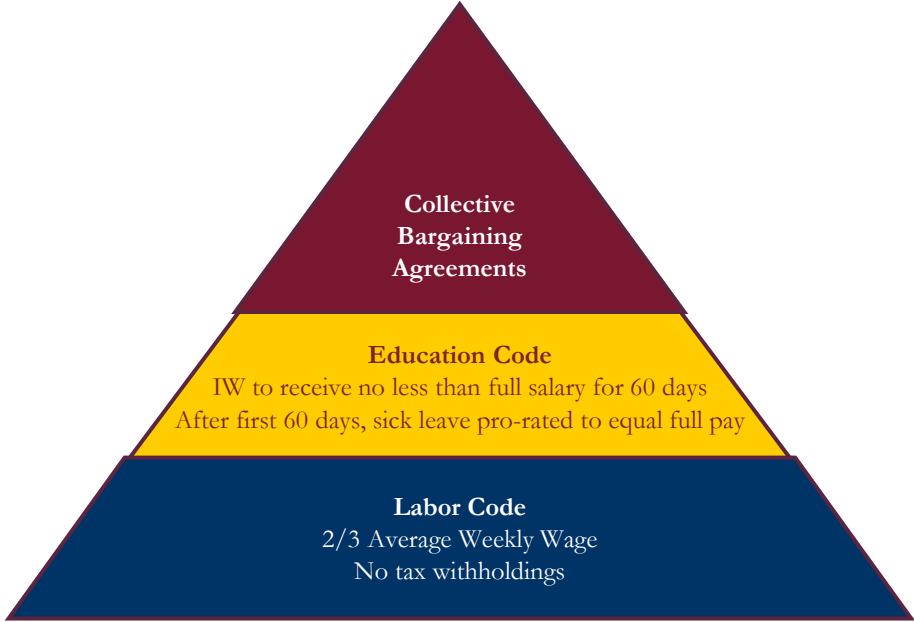
Injury Resolution

- Employee discharged from care with no permanent disability or future medical care. Employee sent a notice of no permanent disability along with the final medical report.
 - Employee has up to 5 years from the date of injury to file for New and Further Disability
 - Employee can dispute and go to the panel Qualified Medical Evaluation
- Employee has final medical from treating physician or panel Qualified Medical Evaluation that states there is permanent disability and/or future medical care.
- Some type of resolution needs to be agreed upon with the Employee and sent to the Workers' Compensation Administrative Law Judge
 - Stipulations with Request for Award
 - Compromise and Release
 - No agreement – go to trial

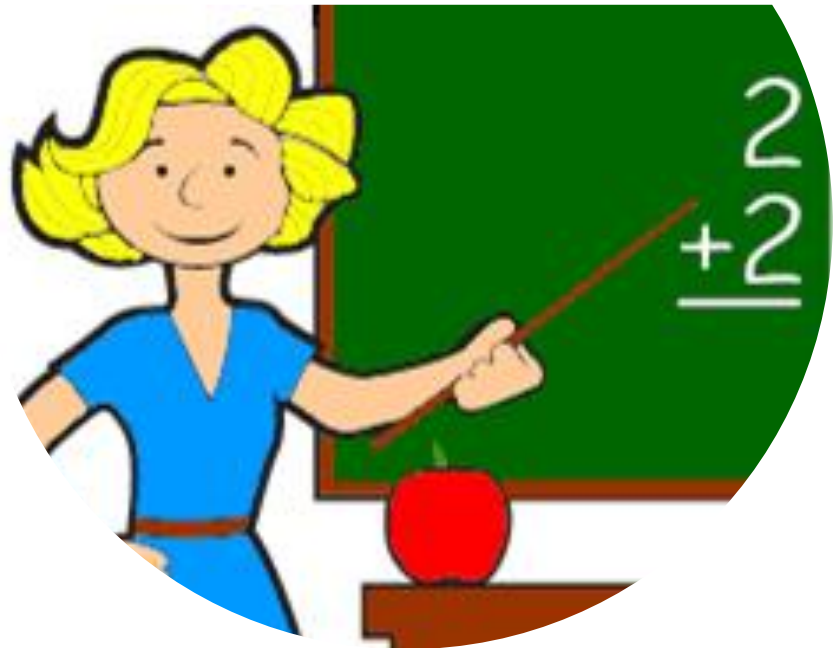
Final Medical Evaluation/Panel QME Process

- Final Evaluation at end of care is called MMI (Maximum Medical Improvement) Evaluation
- Physician will assign an Impairment Rating based upon a physical evaluation of the employee utilizing the AMA (American Medical Association) Guide to Rating Impairment 5th Edition and outline any future medical care that may be necessary.
- Employee can dispute the rating assigned by the treating doctor and request a Panel QME (Qualified Medical Evaluation) through the State of CA. The State will issue a list of 3 Panel QME's and the employee selects one from the list to perform the evaluation. The final rating from the QME is generally binding.

Ed Code Leave & Intersections with Workers' Compensation



Classified Staff or Certificated Staff?



Let's Demonstrate Applying for Leaves for Certificated Employees



Industrial Accident Illness Leave §44984

CA Ed Code § 44984 (Certificated)

- Allowable leave shall be for not less than sixty (60) days during which the schools of the district are required to be in session or when the employee would otherwise have been performing work for the district in one (1) fiscal year for the same accident.

Note: Lost day tracking needs to be for the actual contracted work days; for example: adjunct/part-time, only track leave for the days they are required to actually work not hours.

- Allowable leave shall not accumulate from year to year.
- IAIL shall commence on the first day of absence.
- When absent due to IAIL, and employee shall be paid only that portion of the salary due, which when added to his/her temporary disability indemnity under labor code, will result in not more than his/her full salary.
- Shall be reduced by one day for each day of authorized absence regardless of a TD award.



§44984: Certificated (continued)

- When IAIL overlaps into the next fiscal year, the employee shall be entitled to the only amount of unused leave due to him/her for the same illness or injury

Note: If the employee sustains a new injury from a different accident, that employee will be given a new block of IAIL and to be tracked separately

- Upon termination of the IAIL, the employee shall be entitled to the benefits provided in sections 44977, 44978, 44983. Thereafter to the 39-month reemployment list (or 24-month if probationary)
- ❖ If a Certificated employee is placed on the reemployment list, when they become medically able to return to work, during the 24- or 39-month period, the certificated employee shall be returned to employment in a position for which he or she is credentialed/qualified.(§44978.1) The 24- or 39-month period shall commence at the expiration of the five month period (§44977)

Consult Collective Bargaining Agreement and past practices!



Certificated Employee

60 Working Days

INDUSTRIAL ACCIDENT ILLNESS LEAVE (IAIL) §44984

§44984: Certificated Employees

- Time missed for up to 60 **days** at full salary
- No “waiting period”
- IAIL does not accumulate from year to year
- Can be applied incrementally (by days not hours)
- Regardless of temporary disability award



Certificated Employee

Until Exhausted	Paid Sick Leave (current & accumulated) \$44978
60 Working Days	INDUSTRIAL ACCIDENT ILLNESS LEAVE (IAIL) \$44984

§44978: Certificated Employees

- Certificated staff employed 5 days a week shall be entitled to 10 days of leave
- Accumulates year to year (unlike IAIL)
- Not to be applied until IAIL has been exhausted (60 days)
- Used in conjunction with TTD payments to keep employee at full salary
- Not to exceed employee's full salary



Certificated Employee

§44977: Certificated Employees

- Sick leave, including accumulated sick leave, and the five month period shall run consecutively.
- Employee shall **not** be provided more than one five-month period per illness or accident.
- If school year terminates before the five-month period is exhausted, the employee may take the balance in a subsequent school year.
- Payment shall be the different between employee's salary and substitute pay

5 School Months

Sub-Differential Pay
§44977

Until
Exhausted

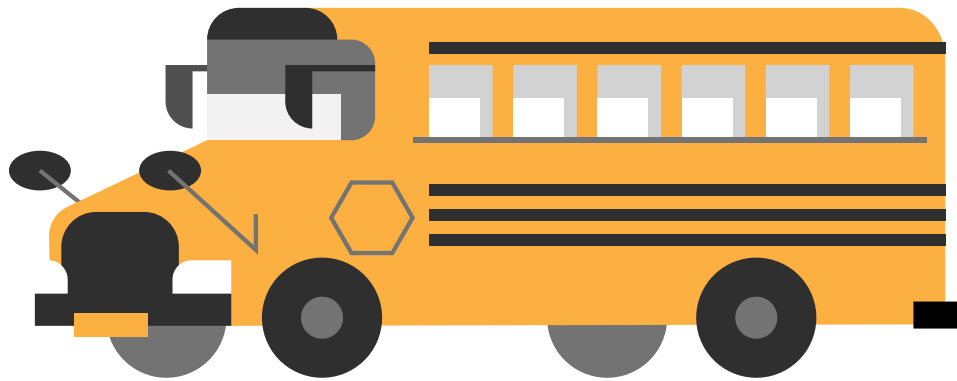
Paid Sick Leave
(current & accumulated)
§44978

60 Working
Days

INDUSTRIAL ACCIDENT ILLNESS LEAVE
(IAIL) §44984



Let's Demonstrate Applying for Leaves for Classified Employees



Industrial Accident Illness Leave §45192

CA Ed Code § 45192 (Classified)

- Allowable leave shall not be for less than sixty (60) working days in any one (1) fiscal year for the same accident.

Note: Lost day tracking needs to be for the actual contracted work days; for example: part-time, only track leave for the days they are required to actually work not hours.

- Allowable leave shall not be accumulative from year to year
- IAIL shall commence on the first day of absence
- Payment for wages lost on any day shall not, when added to an award granted to the employee under workers' compensation laws, exceed the normal wage for the day.
- Shall be reduced by one day for each day of authorized absence regardless of a TD award
- When an industrial accident or illness occurs at a time when the full 60 days will overlap into the next fiscal year, the employee shall be entitled to only that amount remaining at the end of the fiscal year in which the injury or illness occurred, for the same illness or injury.



§45192: Classified (continued)

Note: If the employee sustains a new injury from a different accident, that employee will be given a new block of IAIL and to be tracked separately.

- To be used in lieu of entitlement acquired under Section 45191.
- When entitlement to industrial accident or illness leave has been exhausted, entitlement to other sick leave will then be used.
- When all available leaves of absence, paid or unpaid have been exhausted and the employee is not medically able to assume the duties of his or her position, the employee shall be placed on a reemployment list for a period of 39 months.
- When available, during the 39-month period, the employee shall be employed in a vacant position in the class of the employee's previous assignment over all other available candidates.

Consult Collective Bargaining Agreement and past practices!



Classified Employee

§45192: Classified Employees

- Time missed for up to 60 days at full salary
- No “waiting period”
- IAIL does not accumulate from year to year
- Can be applied incrementally (by days not hours)
- Regardless of temporary disability award

60 Working Days

**INDUSTRIAL ACCIDENT ILLNESS
LEAVE
(IAIL) §45192**



Classified Employee

**Paid Sick Leave
(current & accumulated)
§45191**

60 Working Days

**INDUSTRIAL ACCIDENT ILLNESS LEAVE
(IAIL) §45192**

§45191: Classified Employees

- Classified staff employed 5 days a week shall be entitled to 12 days leave of absence for illness or injury.
- Accumulates year to year (unlike IAIL)
- Not to be applied until IAIL has been exhausted (60 days)
- Used in conjunction with TTD payments to keep employee at full salary
- Not to exceed employee's full salary



Classified Employee

§45196: Classified

- Districts that adopt and maintain a rule which provides a classified employee be provided 100 days of paid sick leave
- Shall be exclusive of any other paid leave (e.g. vacations, compensating time, etc.)
- Employee shall be provided once per year.
- Applicable only if a substitute employee is employed to fill the position

100 Working Days

50% Pay for 100 Days
§45196

Paid Sick Leave
(current & accumulated)
§45191

60 Working Days

INDUSTRIAL ACCIDENT ILLNESS LEAVE
(IAIL) §45192



Classified Employee

§45192: Classified

- After IAIL (60 days), current and accumulated sick leave, and the 100 days of extended sick leave has been exhausted.
- Employee shall be placed on the reemployment list of a period of 39 months (24 mo. if probationary)
- When employee can medically resume duties during the 24- 39- month period, shall be returned to employment.
- Other leave provisions may be applicable depending on past practices and CBA.

100 Working Days

60 Working Days

**39-Month Rehire List
Other Leave Provisions
§45192**

**50% Pay for 100 Days
§45196**

**Paid Sick Leave
(current & accumulated)
§45191**

**INDUSTRIAL ACCIDENT ILLNESS LEAVE
(IAIL) §45192**



Things To Remember

- Remember the differences. Think: Certificated leaves run consecutively, while Classified leaves run concurrent.
- Ed Code does not have a waiting period, but Labor Code does.
- Always double check your CBA to verify if any additional leave rights should be included
- Document all leave(s) applied and provide copies to the injured worker. Remember to stay transparent!
- Past practices may be another obstacle.
- Only one IAIL period per accident.
- Time lost is accumulated w/o a renewal of benefits from year to year.

When in doubt, call competent legal counsel.





Thank you very much for your time! Any questions?