

SICK LEAVE RESTRICTION – FREQUENTLY ASKED QUESTIONS

1. What is Sick Leave Restriction?

Sick Leave Restriction is a management tool for improving productivity, efficiency and overall public service. It is used to address attendance problems or misconduct involving leave abuse, and to give employees notice that they may be violating Civil Service Rules governing appropriate sick leave use.

While on Sick Leave Restriction, employees may only use sick leave with medical certification from a health care provider. Sick Leave Restriction is not discipline; it is imposed to ensure that employees use sick leave appropriately.

2. When is Sick Leave Restriction used?

City departments use Sick Leave Restriction to address employee attendance issues such as:

- Using sick leave, or other leaves in lieu of sick leave, as soon as the leave is earned;
- A pattern of unscheduled sick leave requests or usage;
- Habitual tardiness based on reports of illness; or
- Indications that an employee's justification for using sick leave is false.

Whatever the reason, the goal of placing an employee on Sick Leave Restriction is to correct attendance issues by giving the employee notice and an opportunity to improve without resorting to progressive discipline.

3. Where can I find rules on Sick Leave Restriction?

Civil Service Rules require employees to use sick leave only for purposes covered in the rules. (See, Civil Service Rules 120.11, 220.11, 320.11 and 420.10.) If employees are suspected of using sick leave for reasons not authorized by Civil Service Rules, then departments may restrict sick leave use as permitted by Civil Service Rules 120.1.3, 120.4.1, 120.11.2, 220.1.3, 220.4.1, 220.11.2, 320.1.3, 320.4.1, 320.11.2, 420.1.3, 420.3.1 and 420.10.2.

4. Who decides when to impose Sick Leave Restriction?

Department supervisors, managers and/or Human Resources personnel may decide to impose a Sick Leave Restriction after monitoring employee

attendance. eMerge/PeopleSoft payroll records, internal attendance databases, or investigations of suspected sick leave abuse. These evaluations can support management's decision to impose a Sick Leave Restriction. Supervisors or managers can issue Sick Leave Restriction notices any time an employee's attendance or conduct indicates that sick leave is being used inappropriately. The notice will include information explaining the reason for the action, the length of the Sick Leave Restriction, and what the employee can do if he or she believes that the notice is issued in error.

5. How long can Sick Leave Restriction last?

Supervisors should work with department Human Resources personnel to decide how long an employee's Sick Leave Restriction will last. Generally, restrictions are initially imposed for six months. Following the initial period of Sick Leave Restriction, employees who improve their attendance may have the Sick Leave Restriction lifted. Sick Leave Restriction may be extended or discipline imposed for employees who continue inappropriate sick leave use.

6. Are there limits on when departments can use Sick Leave Restriction?

Yes. When an employee's sick leave is covered under a federal, state or local law, Sick Leave Restrictions may not apply. For example, laws such as the federal Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA), the Workers' Compensation Act, the Americans with Disabilities Act, and the Fair Employment and Housing Act include medical certification requirements and leave protections. Generally, employees granted sick leave protections under these laws cannot be required to provide additional medical certification, or have their sick leave use restricted.

California's Sick Leave and Kin Care laws also provide sick leave protections for covered employees. These laws require employers to grant a limited amount of sick leave annually upon the employee's oral or written request. These laws have been interpreted as restricting an employer's right to request medical certification to support the reason for taking sick leave. Employees cannot be required to provide medical certification if their sick leave is covered under the California Sick Leave Law and/or the Kin Care Law. Department Sick Leave Restriction notices should clarify when medical certifications are not required. (See attached form Sick Leave Restriction notice letter.)

7. Which employees are eligible for federal, state or local leave protections?

Employees must meet eligibility criteria for most legally protected leaves. These criteria include having a qualifying medical condition or disability, or having to care for a qualifying family member with such a condition. Some protected leaves have additional length of service and hours worked requirements. Employees should contact Human Resources personnel for more information regarding eligibility for legally protected leaves.

Laws such as the California Kin Care Law provide employees automatic sick leave protections for up to one-half the employee's available annual sick leave accrual.

8. Which employees are eligible for Kin Care leave?

Employees who accrue sick leave under the City's Civil Service Rules are eligible for Kin Care Law protections.

An employee must have paid sick leave hours available to use on the day of the absence for that absence to be covered under the Kin Care Law. Employees who exhaust their paid sick leave, and then are absent for their own illness or to care for a sick family member, are not eligible for sick leave protections under the Kin Care Law. Also, employees using vacation or other accrued leave in lieu of sick leave are not eligible for leave protections under the Kin Care Law.

9. How much Kin Care protected sick leave can employees take each calendar year?

No more than one-half of an employee's annual accrued paid sick leave can be counted as Kin Care protected leave. For full-time employees, this means that no more than 52 hours of paid sick leave each year can be counted as Kin Care protected leave. The entitlement is calculated by determining the number of hours of sick leave an employee earns annually and dividing that number by two. Most full-time employees accrue 13 paid sick leave days per year (or 104 hours of paid sick leave annually), and thus can take no more than 52 hours of Kin Care protected leave in a calendar year.

10. Can the City count Kin Care protected leave when evaluating whether to place an employee on Sick Leave Restriction?

Yes, if the absences are part of a pattern that includes both Kin Care protected absences and non-protected absences. Departments should make sure that suspicious pattern absences cover a period of time when the employee took unprotected sick leave, or other leave in lieu of sick leave, in addition to taking Kin Care protected sick leave. For example, an attendance review covering a six-month or one-year time period for a full-time employee would need to identify a suspicious sick leave pattern that encompasses more leave than just the 52 hours of Kin Care protected sick leave.

11. For a full-time employee, can the City count the 52 hours of Kin Care protected sick leave for purposes of discipline based on excessive absenteeism?

No. This would likely be a violation of the Kin Care Law, which prohibits retaliation for using protected sick leave. (See, Labor Code section 223(c).) Absences protected under the Kin Care Law should be excluded from discipline based on excessive absenteeism.

12. Can the City cite Kin Care protected sick leave in an employee's performance evaluation?

No. This could be interpreted as violating the Kin Care Law's anti-retaliation provision. Performance evaluations can serve as the first step in identifying performance problems, and may be used to justify progressive discipline or other adverse employment actions, e.g., placing the employee on a Performance Improvement Plan (PIP). Departments should not cite Kin Care protected sick leave as a performance deficiency in performance evaluations or PIPs.

13. Can the City ask an employee on Sick Leave Restriction to provide a doctor's note when only part of the day is protected under the Kin Care Law?

Yes. Departments can ask employees on Sick Leave Restriction for a doctor's note to cover any sick leave hours that are not protected under the Kin Care Law or other medical leave laws. Assuming the employee takes leave in full day increments, departments should be very careful and make sure to only ask for a note to cover the unprotected sick leave hours. (See attached form Sick Leave Restriction Notice.)

14. If an employee on Sick Leave Restriction takes protected sick leave under the Kin Care Law and gives a doctor's note to his/her supervisor, should the note be returned?

No, but the employee should be told that he/she does not have to bring in a doctor's note for any sick leave hours/days protected under the Kin Care Law or other medical leave laws. Information on legally protected sick leave should be included in the Notice of Sick Leave Restriction. (See attached Form Sick Leave Restriction notice.)

15. Does the City Civil Service Rule requiring an employee to bring a doctor's note to return to work after 5 days of sick leave conflict with the Kin Care Law, which does not allow the City to ask for a doctor's note for up to one half of an employee's annual accrued leave amount?

The state Kin Care Law preempts the City's Civil Service Rule; however, there may be exceptions where public safety regulations require medical certification before clearing employees for return to work after five days of sick leave, e.g., for employees covered under Department of Transportation Regulations.

16. How do we track Kin Care protected leave accruals for part-time employees?

Departments should establish processes for tracking employee Kin Care Law entitlements. Part-time employees accrue sick leave on a prorated basis and their Kin Care protected sick leave is one-half of the amount of sick leave they earn in a year. The Department of Human Resources' Leave Management Program is working with the Controller's Office, eMerge Division, to develop a system for tracking employees' Kin Care leave entitlement.