

The State Contract Series  
For use in understanding the state employees'  
contract



## Article 29 - Sick leave

### NEGOTIATING HISTORY

Sick leave benefits and how they are used have been a major area of dispute in bargaining over the years. The state sought major changes in the 1994-1997 and the 1997-2000 rounds of bargaining that resulted in no agreement; and consequently, a fact finders recommendation was required. At the conclusion of both bargaining periods, the fact finder concluded that sick leave use by state employees was excessive and contract rights needed major changes to reduce the usage.

In the 1994-1997 agreement, the fact finder recommended a sick leave grid that resulted in discipline if employees had six or more sick leave occasions in a 12-month period. In the bargaining for the 1997-2000 contract, we were successful in eliminating the very unpopular grid and other employer proposals aimed at reducing eligibility for sick leave as well as imposing more discipline for use. The fact finder for the 1997-2000 contract stated that the sick leave language needs to attack the problem with "intensity" in order to change behavior. He recommended that the second 40 hours of sick leave utilized within a calendar year period be paid at 70%.

In the 2000-2003 round of bargaining, the state sought no changes in the language observing that sick leave use had been reduced. Savings were generated by the 30% reduction in the rate, fewer people using more than five days and the overtime payout reduction associated with filling in for those absent. The fact finder ruled that the generous disability benefit helped offset the 70% pay for the second week used, but that increased incentive of cash out for unused sick leave should be offered.

In the 2003-2006 round of bargaining, the state noted that sick leave usage was once again up and in fact higher than it had been just before it implemented the 70% reduction in 1997. Therefore the state demanded that the payout be reduced to 50% for the second week. Fortunately the union prevailed in preventing that reduction and the matter did not go to fact finding. Additionally the union negotiated a clause that would allow for time spent in a hospital and time right before and after time spent in the hospital to be paid at 100% even if the time falls into the second week used – no 70% reduction will be imposed in this circumstance, as long as the individual with the illness is the employee, employee's spouse or a child residing with the employee. Finally the union secured agreement that agencies or institutions can negotiate alternative payment plans than the 70%. This gives an agency the ability to mutually agree to pay employees more for the second week of sick leave than 70% if for example their overall sick leave utilization is down. Such agreements must have the blessing of the agency and the Office of Collective Bargaining and cannot violate the FMLA.

In the 2009-2012 round of bargaining, the union negotiated a clause that allows for time spent in out-patient surgery and time contiguous (right before and right after) out-patient surgery to be paid at 100% even if the time falls into the second week used-no reduction to 70% will be imposed in this circumstance, as long as the individual with the illness is the employee, employee's spouse or a child residing with the employee. Also, new language allows an employee to use sick leave to supplement their pay up to 100% if the new employee is in the 70% pay status if the leave usage is for a pre-scheduled medical appointment and the employee has given the employer at least 30 days notice of the need for leave for this purpose.

Sick leave is a contractually defined benefit. It is to be used specifically for the illness of, injury of, ongoing treatment for, or medical appointments for the bargaining unit member or his/her immediate family. The definition for immediate family has been expanded to include step-parent, great-grandparent and step-sibling. However, in order to use sick leave for members of the immediate family, those people defined must be living in the employee's household unless the leave is taken properly pursuant to The Family and Medical Leave Act (which has a different definition of "family" than the contract - see Fact Sheet # 252) and sick leave is being taken in lieu of unpaid leave. There is an exception to the requirement that members of immediate family live in the residence of the state employee. State employees may use sick leave to care for their children regardless of whether or not the child is currently living in the same household. However, if the child is being cared for at home and both parents are state employees, only one parent may use sick leave. If the child is hospitalized both parents may use leave.

Sick leave cannot be taken at will by the employee; it must be taken within the limits listed in the contract. The employer has the right to monitor sick leave. Reasonable requirements regarding proof-of-illness or meeting call-in requirements have been determined to be contractual prerequisites to receiving sick leave (See Arbitration #178). Some requirements are spelled out in the contract; for example, where absences are for more than one day, employees can reach agreement on report in arrangements, but if no agreements exists, agency reporting procedures will apply. An employee must notify

the State within a half hour of starting time, or 90 minutes, or in accordance with current practice in agencies where staffing requires advance notice. The employee, him/herself must notify the supervisor unless circumstances preclude personal notification.

While sick leave should not be denied if proper call-in procedure is followed and there is sufficient earned sick leave available, the employee may be required to produce medical evidence of the illness. A written note from the treating physician must be written and signed by the "physician or his/her designee".

This note, however, and any call-in notification, does not require a statement of the specific illness --only that the bargaining unit member was unable to work due to illness, and, if a qualifying FMLA condition, that the bargaining unit member was unable to work due to an FMLA illness or serious condition.

#### **SICK LEAVE POLICY**

The contract defines proper use of sick leave and how it is authorized; and it defines disciplinary and corrective actions for inappropriate use. Where the employer concludes that sick leave is unauthorized or it is abused, the contract requires that the consequent discipline be corrective and progressive, keep in mind any extenuating or migrating circumstances. The contract also calls attention to alternative intervention strategies such as EAP.

Unauthorized use or pattern abuse is defined in the contract. Related discipline resulting from such violations should follow the just cause and other disciplinary requirements outlined in Article 24, as well as Article 29. Charges relating to sick leave violations need to take into consideration an employee's

sick leave history and circumstances (see Arbitration #555) and the impact absences have on the operation of the agency (see Arbitrations # 191, #198 and #217).

**IN LIEU OF TIME**

When employees have exhausted their accrued sick leave, they may use accrued vacation, compensatory leave or personal days to cover their absence with the permission of the employer. Where such sick leave is needed and the absence is covered by the Family Medical Leave Act(FMLA), the employer is required to grant the leave time in lieu of sick leave. Each agency should establish a policy regarding the granting of discretionary leave in lieu of sick leave so that employees can be guided on how this time might be used and to help assure a consistent and fair consideration of requests.

**SICK LEAVE ACCRUAL AND CONVERSION**

Full time employees accrue 10 sick days (80 Hours) per year and part time employees accrue sick leave based on a pro rata share of the hours they work. Sick leave is paid based on a defined usage period and depending on how much sick leave is used during the period. The usage and accrual period for sick leave begins with the pay period that includes December the 1<sup>st</sup> each year.

A 12 month use period will be in effect for determining the rate of pay for sick leave used during these periods. For the first 40 hours of sick leave used during the usage period, such time will be paid at 100% of the regular rate of pay. Sick leave used from 40.1 to 80 hours during the usage period will be paid at 70% of the regular rate of pay. Sick leave used in excess of 80 hours during the usage period will be paid at 100% of the regular rate of pay. However effective with the 2003 agreement, sick Leave used between the 40.1 and 80 hours used for time spent in the hospital or immediately will be paid at 100% for the employee, employee’s spouse or child (residing with the employee).

Effective with the 2009 agreement, sick leave used between the 40.1 and 80 hours used for time spent In out-patient surgery or immediately contiguous (next to) the time spent in out-patient surgery will be paid 100% when the individual undergoing the sur-

gery is the employee, employee’s spouse or child residing with the employee.

The same usage periods are used to determine eligibility for cash conversion of sick leave. Employees are eligible for cash conversion of their sick leave up to 80 hours for a usage period. The rates of payment are based on the number of hours that have been accrued and not used.

Number of Hours Subject To Conversion	% of Regular Rate
80	80%
72 to 79.9	75%
64 to 71.9	70%
56 to 63.9	65%
48 to 55.9	60%
47.9 and less	55%

Payment for converted sick leave is received after the usage period in the first pay received in December.

Employees can cash out sick leave at 55% for those who retire from state service.

Sick leave is not available for use until it appears on the employee’s earning statement (pay stub) and on the date funds are available.

Effective with the 2009 agreement, sick leave requested at least 30 days in advance for pre-scheduled medical appointments for an employee, employee’s spouse or child residing with the employee which would normally be paid at 70% may be supplemented with additional sick leave at the employee’s request, if a physician’s statement is submitted on the first day of return to work. The request must be On the RFL form.

**LEAVE DONATION**

Employees participating agencies are eligible to donate and receive leave from the statewide paid leave donation program.

References:  
 Fact Sheet #252  
 Article 24,29  
 Arbitration 178, 191,217,555

### **Sick leave Pilot Projects**

The union and the state can jointly explore, design and implement sick leave policies at an institution, agency, or as otherwise agreed. Such joint efforts can result in changes to Article 29 including changes in the amount of payment for sick leave for the second week of use. However any changes must not violate the Family Medical Leave Act. The selection of the jurisdiction, the concepts and implementation will be by mutual agreement of the union and the state. The language permits different concepts to be deployed in different agencies where there is mutual agreement. The contract provides \$25,000 to assist with study and implementation, acknowledging that changing sick leave practices can be very complex.

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# **OCSEA**

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**AFSCME LOCAL 11 AFL-CIO**