

Sick leave must be granted to an employee who is unable to perform his or her duty in the school due to personal sickness, accident disability, or extended personal illness. Also, leave must be granted to an employee who has to be absent from his or her work because of illness or death of his or her father, mother, brother, sister, husband, wife, child, other close relative, or member of his or her own household. Boards may permit up to six absences for personal reasons to be deducted from accrued sick leave. Leave for personal reasons is noncumulative.

Section 231.40(4), F.S., sets forth the requirements related to sick leave pools for employees of a district school system. A district school board may, by rule or collective bargaining agreement, establish one or more plans to allow pooling of accrued sick leave by participating full-time employees and disbursing this leave to any participating employee who is in need of sick leave in excess of the amount he or she has personally accrued. Specific provisions for eligibility criteria, conditions for use, and contributions must be included in rules or agreements. These include:

- Any full-time employee is eligible to participate in any sick leave pool after 1 year of employment with the district school system, provided the employee has accrued the minimum amount of unused sick leave (established in rule) and there is a pool allowing participation by that particular employee.
- Pooled sick leave must be removed from the personally accumulated sick leave balance of the donor.
- Any sick leave time drawn from the pool must be used for the employee's personal illness, accident, or injury.

The law also provides for investigations, penalties, and sanctions for abusing the sick leave pool. Rules must provide for investigating the use of sick leave by the participating employees.

There is currently no provision in law that requires a district school board to adopt a policy authorizing an employee to allow a family member to use his or her accrued sick leave, if the family member is also a district employee. As well, there is no specific provision allowing for a "designated donor" sick leave pool. Under the 1999-2003 collective bargaining agreement for the United Teachers of Dade on behalf of Miami-Dade County public schools, an employee may either contribute to the sick leave pool in general or direct the contribution to another member of the sick leave pool who has exhausted all hardship leave, dire emergency leave, and sick leave pool days.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 231.40(3), F.S., to require each district school system to provide a policy under which a district employee may allow his or her family members (spouse, child, parent, or sibling) to use the sick leave that has accrued to the employee. The provision only applies to the spouse, child, parent, or sibling if he or she is also a district employee.

Section 2. The bill provides an effective date (July 1, 2001).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None. Current law requires district school boards to provide sick leave for their employees. The provisions of the bill appear to allow additional flexibility for existing sick leave provisions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Sick leave benefits are sometimes considered in the negotiations for the employee's union contract. State and federal constitutional impairment of contract clauses prohibit the passage of laws that impair existing contractual obligations. Changes to employee leave policies are usually prospective.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The extent to which the provisions of the bill will result in an employee's donated sick leave being used by family members is unknown.

VI. Technical Deficiencies:

The bill amends the general provisions related to sick leave. District school board rule could provide for eligibility requirements, conditions for use, and contributions, although the bill does not specifically provide for this. Also, it is unclear as to whether the intent of the bill is also to address sick leave pools. If the intent of the bill is to allow an employee to create a "designated donor" sick leave pool, the provisions of the bill should be drawn to s. 231.40(4), F.S., and the existing sick leave pool provision (s. 231.40(4)(e), F.S.) would also need to be amended to provide that specified family members may use the donated leave.

VII. Related Issues:

The provision in s. 231.40, F.S., which limits the sick leave that is drawn from the pool to the employee's personal illness, accident, or injury is similar to the provisions for state career service employees (s. 110.121(4), F.S.) and community college employees (s. 240.343(6)(e), F.S.), as well as provisions in administrative rule for Florida A&M University, Florida Gulf Coast University, and Florida State University. According to the United Faculty of Florida, the representative for faculty and professionals at the ten state universities, no current collective bargaining agreement contains provisions similar to those contained in the bill.

The administrative rules for state career service employees (Rule 60K-5.030 and Chapter 60L-11, F.A.C.) provide for how sick leave may be used¹ and each agency head may establish a sick leave transfer plan allowing an employee to donate his or her personal sick leave credits to another employee within the career service system, selected exempt service, or senior management service. The agency may also limit the transfer of these credits solely within the agency or for interagency transfers. The same provisions and restrictions apply to intra-agency and interagency transfers. Under the interagency transfer plan, all requests to donate from within the agency must be processed before donations to other agencies, with the exception of the receiving employee's spouse and parents, grandparents, brothers, sisters, children, and grandchildren of both the employee and spouse.

VIII. Amendments:

#1 by Education:

Provides that the district school board must provide that the recipient may not use the donated leave until he or she has used his or her own sick leave and that donated sick leave for a family member cannot be used for terminal leave purposes. (With Title Amendment)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

¹ Sick leave may be used for the employee's personal illness, injury or medical appointments, as well as for the illness, injury, or well-care check ups of the employee's spouse, the children or parents of the employee or spouse, or a person for whom the employee or spouse has caretaker responsibility.