

POLICY SERVICES ADVISORY

Volume 32, Number 1

April 2020

Policy Advisory No. 670 Policy GCCA — Professional/Support Staff Sick Leave

Policy Advisory No. 671 **NEW** Policy GCKA — Professional/Support Staff
Telecommuting

POLICY ADVISORY DISCUSSION

Policy Advisory No 670

**Policy GCCA — Professional/Support Staff
Sick Leave**

This policy advisory updates Policy GCCA, Professional/Support Staff Sick Leave, due to new constraints placed on employers in responding to the on-going pandemic and employer responses to requests for earned paid sick time for all employees.

Policy Advisory No. 671

**Policy GCKA — Professional/Support Staff
Telecommuting**

Policy GCKA, Professional/Support Staff Telecommuting, is a new policy, developed for District and School use due to employer responses pertaining to work-from-home situations related to on-going, state-wide school closures.

=====

If you have any questions, call Policy Services at (602) 254-1100. Ask for Chris Thomas, General Counsel/Associate Executive Director; Dr. Terry Rowles, Assistant Director; Steve Highlen, Senior Policy Consultant; or David DeCabooter, Policy Consultant/Staff Attorney. Our e-mail addresses are, respectively, [cthomas@azsba.org], [trowles@azsba.org], [shighlen@azsba.org] and [ddecabooter@azsba.org]. You may also fax information to (602) 254-1177.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to review the policy references and consult an attorney for further explanation.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**GCCA ©
PROFESSIONAL / SUPPORT STAFF
SICK LEAVE**

Sick leave for District personnel is a designated amount of compensated leave that is to be granted to a staff member who, through personal or family illness, injury, or quarantine, is unable to perform the duties assigned.

Each staff member shall be credited with a sick leave allowance at the rate of _____ () days per month up to ten (10) or twelve (12) days, determined by the number of months employed:

Twelve (12) month employment	twelve (12) days
Ten (10) month employment	ten (10) days

The unused portion of such allowance shall accumulate to a maximum of _____ () days, at which time no more sick leave can be accumulated. As accumulated sick leave days are used and drop below _____ () days, an eligible employee may again accumulate sick leave up to the maximum limit.

When a staff member exhausts all days of accumulated sick leave, an unpaid leave of absence must be requested, pursuant to District policy.

Sick leave of any staff member who does not serve a full school year shall be prorated at the rate of one (1) day per month.

If an employee does not wish to return to her duties following childbirth, an extended leave of absence must be requested, consistent with existing District policy.

Upon request, the staff member shall inform the Superintendent of the following:

- A. Purpose for which sick leave is being taken.
- B. Expected date of return from sick leave.
- C. Where the staff member may be contacted during the leave.

**Use of Earned Paid
Sick Time**

Earned paid sick time shall be provided to an employee by an employer for:

- A. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care;

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

B. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care;

C. Reasons related to child care, domestic violence, sexual violence, abuse or stalking, and legal services as described in A.R.S. 23-373.

D. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

Earned paid sick time shall be provided upon the request of an employee. Such request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request shall include the expected duration of the absence.

When the use of earned paid sick time is foreseeable, the employee shall make a good faith effort to provide notice of the need for such time to the employer in advance of the use of the earned paid sick time and shall make a reasonable effort to schedule the use of earned paid sick time in a manner that does not unduly disrupt the operations of the employer.

An employer that requires notice of the need to use earned paid sick time where the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to the employee a copy of its written policy for providing such notice shall not deny earned paid sick time to the employee based on non-compliance with such a policy.

An employer may not require, as a condition of an employee's taking earned paid sick time, that the employee search for or find a replacement worker to cover the hours during which the employee is using earned paid sick time.

Earned paid sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.

For earned paid sick time of three (3) or more consecutive workdays, an employer may require reasonable documentation that the earned paid sick time has been used for a purpose covered by A, B, or C, above. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section.

As defined in statute (**A.R.S. 23-371**), "family member" means:

- A. Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands *in loco parentis*, or an individual to whom the employee stood *in loco parentis* when the individual was a minor;
- B. A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood *in loco parentis* when the employee or employee's spouse or domestic partner was a minor child;
- C. A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;
- D. A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
- E. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Notice:

- A. Employers shall give employees written notice of the following at the commencement of employment ~~or by July 1, 2017, whichever is later~~: employees are entitled to earned paid sick time and the amount of earned paid sick time, the terms of its use guaranteed in statute, that retaliation against employees who request or use earned paid sick time is prohibited, that each employee has the right to file a complaint if earned paid sick time as required by statute is denied by the employer or the employee is subjected to retaliation for requesting or taking earned paid sick time, and the contact information for the commission where questions about rights and responsibilities under can be answered.
- B. The required notice required shall be in English, Spanish, and any language that is deemed appropriate by the Industrial Commission of Arizona.
- C. The amount of earned paid sick time available to the employee, the amount of earned paid sick time taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick time shall be recorded in, or on an attachment to, the employee's regular paycheck.
- D. The Industrial Commission of Arizona shall create and make available to employers, in English, Spanish, and any language deemed appropriate by the commission, model notices that contain the information for employers' use in complying with the statute.
- E. Employer violation of the notice requirements shall be subject to a civil penalty as prescribed in A.R.S. [23-364](#).

Accrual:

A. Employees of an employer with fifteen (15) or more employees shall accrue a minimum of one (1) hour of earned paid sick time for every thirty (30) hours worked, but employees shall not be entitled to accrue or use more than forty (40) hours of earned paid sick time per year, unless the employer selects a higher limit.

B. Employees of an employer with fewer than fifteen (15) employees shall accrue a minimum of one hour of earned paid sick time for every thirty (30) hours worked, but employees shall not be entitled to accrue or use more than twenty-four (24) hours of earned paid sick time per year, unless the employer selects a higher limit.

C. Earned paid sick time shall begin to accrue at the commencement of employment ~~or on July 1, 2017, whichever is later~~. An employer may provide all earned paid sick time that an employee is expected to accrue in a year at the beginning of the year.

D. An employee may use earned paid sick time as it is accrued, except that an employer may require an employee hired after July 1, 2017, to wait until the ninetieth (90th) calendar day after commencing employment before using accrued earned paid sick time, unless otherwise permitted by the employer.

E. Employees who are exempt from overtime requirements under the Fair Labor Standards Act of 1938 (29 United States Code section 213(A)(1)) will be assumed to work forty (40) hours in each work week for purposes of earned paid sick time accrual unless their normal work week is less than forty (40) hours, in which case earned paid sick time accrues based upon that normal work week.

F. Earned paid sick time shall be carried over to the following year, subject to the limitations on usage indicated above for employees of employers with fifteen (15) or more employees and employees of employers with fewer than fifteen (15) employees. Alternatively, in lieu of carryover of unused earned paid sick time from one (1) year to the next, an employer may pay an employee for unused earned paid sick time at the end of a year and provide the employee with an amount of earned paid sick time that meets or exceeds the requirements in statute that is available for the employee's immediate use at the beginning of the subsequent year.

G. If an employee is transferred, but remains employed by the same employer, the employee is entitled to all earned paid sick time accrued and is entitled to use all earned paid sick time as provided in this section.

H. When there is a separation from employment and the employee is rehired within nine (9) months of separation by the same employer, previously accrued earned paid time that had not been used shall be reinstated. Further, the employee shall be entitled to use accrued earned paid sick time and accrue additional earned paid sick time at the re-commencement of employment.

I. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick time they accrued when employed by the original employer, and are entitled to use earned paid sick time previously accrued.

J. At its discretion, an employer may loan earned paid sick time to an employee in advance of accrual by such employee.

Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this article is not required to provide additional paid sick time.

Nothing in statute shall be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick time that has not been used.

Retaliation Prohibited

It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected in statute.

An employer shall not engage in retaliation or discriminate against an employee or former employee because the person has exercised protected rights. Such rights include but are not limited to the right to request or use earned paid sick time pursuant to the statute; the right to file a complaint with the commission or courts or inform any person about any employer's alleged violation; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the commission in its investigations of alleged violations and the right to inform any person of his or her potential rights.

It shall be unlawful for an employer's absence control policy to count earned paid sick time taken as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this policy based on the supporting statutes.

Adopted: _____

LEGAL REF.:

A.R.S.

15-187

15-502

23-363

23-364

23-371

23-372

23-373

23-374

23-375

CROSS REF.:

GCBA - Professional Staff Salary Schedules

GCKA ©
PROFESSIONAL / SUPPORT STAFF
TELECOMMUTING

The Superintendent shall have the responsibility for the assignment of all personnel throughout the District. The procedure for assignment and transfer of staff members will be based on the needs of the overall instructional program, the specific needs of schools, and the need to maintain District operations. In addition, there is no right to school, grade, or subject assignment or position assignment inferred for participation in the telecommuting program related to a staff member's contract or on-going job placement or work agreement.

The participation of staff members in the telecommuting program within the District shall take into consideration the needs of the pupils in the District and the distribution of teachers and other staff members to maintain District and school operations at the highest level possible.

Assignments to telecommuting will not be made unless dictated by the needs of the District.

The resolution of any conflicts over the need for such assignment shall be based on what is best for the instructional program, the needs of the students, and the overall needs of the District as defined by the Superintendent.

The employment relationship for an employee telecommuting stays the same as for employees not telecommuting. Employees are expected to follow all job requirements as developed by the Superintendent.

The employee shall:

A. Be available by phone and e-mail during normal work hours. Absences (including unavailability during work hours) must be pre-approved.

B. Promptly notify the Superintendent when unable to perform work assignments due to illness, equipment failure, or other unforeseen circumstances.

C. Alter their schedule to attend mandatory meetings or other situations needing a physical presence and/or as needed by the Superintendent.

D. Assure the alternative worksite is adequate and safe and has sufficient phone service and a secure internet connection with enough speed to perform work, and that confidential information will be safeguarded.

E. Report, at once, to the Superintendent any injury that occurs at the alternative site during work hours.

The Superintendent will regularly check employee compliance with the telecommuting requirements, relevant guidelines, performance standards, productivity, and time accountability.

The Superintendent may discontinue the telecommuting assignment at any time.

Adopted: _____

LEGAL REF.:

A.R.S.

15-341

15-901