



## Regulation of the Chancellor

Number: **C-603**

Subject: **RESPONSIBILITIES OF ABSENT EMPLOYEES**

Category: **PEDAGOGICAL PERSONNEL**

Issued: **August 1, 2002**

### **SUMMARY OF CHANGES**

This regulation supersedes C-603 – dated 02/02/88 and 9/05/00

The regulation sets forth the responsibilities of pedagogical employees in schools, community school district and Board of Education offices, when absent from duty.

Changes:

- The revised regulation redesignates the office to which to submit a request for a waiver of the regulations regarding prohibition of employment during sabbatical leave.



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### ABSTRACT

This regulation sets forth the responsibilities of pedagogical employees in schools and Board of Education and community school district offices when actually absent from duty.

#### 1. Notice by Absent Employees

- a. Each employee is responsible for informing the principal or office head of the nature and probable duration of any actual absence or leave as soon as possible.
  - (1) If the absence can be anticipated, the employee must inform the supervisor as soon as possible and submit the required application prior to the commencement of the period of actual absence.
  - (2) If the absence cannot be anticipated, the employee must inform the supervisor as soon as possible by telephone or similar means and submit the required application as directed by the supervisor.
- b. The importance of early notification and application for excuse of absence or leave cannot be overemphasized.
  - (1) Absence may require the employment of a substitute teacher or the adjustment of an office work schedule.
  - (2) Pending receipt and approval of the required application for excuse or leave, time lost must be considered unauthorized absence.
  - (3) The submission of any application, of and by itself, does not constitute authorization for absence or leave prior to approval. Therefore, to expedite processing and to minimize withholding of pay, applications for excuse or leave must be submitted as early as possible. In any case, an application for excuse or leave may not be accepted or acted upon when it is received by the school or office supervisor more than thirty calendar days after the date of return to duty. Thus, failure to submit the required application on time may result in permanent loss of pay and impairment of status.
  - (4) Teachers and supervisors who are absent for twenty consecutive school days (or work days for headquarters and district staff) without notice shall be deemed to have resigned unless they have reasonable cause for failure to notify.

#### 2. Application for Excuse or Leave

An application normally consists of the prescribed form, properly completed together with any related documentation. For example, an application for extended sick leave would consist, at a minimum, of the Application for Sick Leave (on Form OP 198) and also the Confidential Medical Report (on Form OP 407). In this case, until both documents have been submitted, the application is incomplete and cannot be acted upon. (In some cases of limited use, where there is no printed application form, application is by letter and such a

letter, properly prepared and with any related documentation, serves in place of a printed application form.)

- a. Since it is impossible to act upon an application which has not been received, it is the responsibility of the employee to ensure proper delivery to the principal or office head. (In many schools, the principal has designated the school secretary as the one to receive applications for excuse of absence or leave. In such cases, submission of an application to the school secretary satisfies the requirement.)
- b. Care and accuracy are essential in the preparation of applications for excuse or leave. Submission of an application which is incomplete, inaccurate or which contains false information does not constitute proper or timely application for excuse or leave. Moreover, submission of an application or related documentation which includes false information may constitute a violation of the penal code of the State of New York for which the employee, whether tenured or not, may face serious disciplinary action including dismissal or termination of service.

### **3. Employee's Responsibility for Continuing Contact During Leave**

During any period of absence or leave, particularly, one of prolonged duration, the absent employee is responsible for maintaining contact with the school or office to which assigned and for apprising the principal or office supervisor of any development which might affect the absent employee's status or of any change of the address at which the employee may be reached.

### **4. Failure to Resume Service Upon Expiration of Excuse or Leave**

Each employee is required to resume actual service upon the expiration of any period of excused absence or leave. Failure to do so without permission constitutes unauthorized absence as from the date the approval for absence or leave expires. Should it become apparent that it will not be possible to resume service by the date originally projected, the employee must notify the principal or office supervisor of that fact and submit such additional application for excuse or leave as the supervisor directs.

- a. An employee whose absence has been excused or who has been granted leave of absence may not assume that the excuse or leave will be extended automatically. Thus, for example, the fact that a community school district has granted one year of leave of absence without pay for adjustment of personal affairs may not be construed as binding the same district to renew or extend that leave when it expires. Renewals or extensions must be applied for and may be granted or denied according to circumstances and the needs of the school system at the time.
- b. Because of a change in circumstances during a period of absence or leave, an employee may apply for a change in the type or purpose thereof.
  - (1) Generally, except for Terminal Leave and as further provided by subdivision (2) below, an employee may not be granted a change from unpaid to paid leave status without the intervention of a period of actual and personal service.

(2) As an exception to the rule set forth in subdivision (1) above, an employee who was granted a leave of absence for a purpose other than restoration of health may be granted paid sick leave at the expiration of such leave provided the employee's cumulative absence reserve has not been exhausted and the employee is medically certified as unable to resume actual and personal service. However, an employee may not be permitted to terminate an unexpired leave and receive paid sick leave immediately thereafter.

#### **5. Resumption of Service Prior to Expiration of Excuse or Leave**

Should it become apparent that it will be possible to resume service earlier than the date originally projected, the employee must notify the principal or office supervisor of that fact as soon as possible.

- a. Generally, an employee who has been absent for an extended period on account of illness is permitted to resume service whenever the attending physician indicates sufficient recovery of health. When the School Medical Director has indicated that return is subject to prior approval by the Medical Bureau, the employee must be directed to the Medical Bureau to secure the required permission.
- b. Generally, a pedagogical employee in a school who is granted extended leave other than for reason of health may not return during a term since that would disrupt instruction
- c. Termination of a leave of absence without pay, sabbatical or other leave of absence requires application to, and approval by, the authority which granted the leave. Termination of a leave granted for restoration of health also requires approval by the School Medical Director.

Note: Should an employee have been transferred from one district to another subsequent to the grant of a leave of absence, the new district assumes jurisdiction with respect to renewals or terminations of such leave.

#### **6. Prohibition on Gainful Employment During Absence or Leave**

- a. Except with the explicit, written approval of the Chancellor or the appropriate Superintendent or, in accordance with the specific terms and conditions of the grant of leave, no employee may engage in remunerative employment of any type or receive compensation, directly or indirectly, or enter into any agreement, express or implied, during the period of any type of leave of absence without pay, maternity leave, child care leave or sabbatical leave during periods of excused absence or leave of absence. This prohibition includes the following:
  - (1) All full or part-time work regardless of whether or not such employment was engaged in or permitted prior to the period of excuse or leave during which the employee is actually absent from normal duty.

(2) Afternoon or evening activities of the Board of Education or any community school district, but the absence of a teacher during the day would not necessarily preclude attendance at an evening parent-teacher conference by a teacher who wished to do so, and absence from any afternoon or evening activity shall not preclude service in the primary position during the normal school day.

Note: Most leaves of absence other than for health are granted with permission to perform occasional per diem substitute service during the leave.

- a. As an exception to the foregoing prohibition, employment during a leave of absence for restoration of health may be authorized when the School Medical Director certifies in writing that the employment is consistent with a continuing disability or medical condition which precludes normal teaching service. Thus, a teacher who was unable to move about sufficiently to teach, might be permitted to engage in light office work during the health leave until sufficiently recovered to resume teaching duties. This exception does not apply to sabbatical leaves for restoration of health.
- b. Should an employee engage in remunerative activity or employment in violation of this subdivision, the Executive Director of Human Resources or appropriate Superintendent may terminate the grant of leave or excuse of absence and take other appropriate action; any time lost after the effective date of such termination shall be recorded and reported for payroll deduction as unauthorized absence.

#### **7. Prohibition on Studying for Another Trade or Profession**

Employees shall not engage in study for another trade or profession during the period of any type of leave of absence or sabbatical leave, except as provided for by the terms of the leave agreement or by regulations.

#### **8. Prohibition on Employment During Sabbatical Leave**

- a. Except as provided in Chancellor's Regulation C-650, no pedagogical employee who has been granted sabbatical leave of absence for any purpose may engage in any gainful employment or occupation during the leave nor may such an employee study for another trade or profession. The prohibition on employment during sabbatical leave includes any full or part-time work regardless of whether or not such employment was engaged in or permitted prior to the period of sabbatical leave.
- b. Employees who are taking sabbatical leaves of absence may be eligible to receive a waiver of the regulations from the Division of Human Resources, Attention Office of Field Services and Information, by submitting a letter documenting continuous outside employment for at least three years prior to taking the sabbatical and proof of any approval to take the sabbatical. In the event that the three year criteria is not met, but

the proposed activity would benefit directly the Board of Education, a waiver may be granted upon the presentation of appropriate documentation.

- c. Employees who work while on leave without obtaining a waiver will be subject to disciplinary action, and possible recoupment of monies received.

#### **9. Prohibition on Leaving New York City Area During Health Leave**

Since an employee seeking approval of actual absence on account of illness or physical disability must be available for examination by the Medical Bureau, no such employee may relocate either permanently or temporarily to any place remote from the employee's home of record without the express, written permission of the Chancellor or School Medical Director. For this purpose:

- a. "Home of Record" means the last home address filed, as prescribed by regulations, with the school or office payroll secretary prior to the absence; and
- b. "Remote Location" means a place which is more than one hour of travel time from New York City. However, and provided the school or office is notified of the change in writing and in accordance with regulations, permission is not required for relocation from one New York City address to another within the City.

#### **10. Required Certification of Illness or Disability**

All applications for excuse or leave for medical reasons must be accompanied by a certification of the nature of the illness or disability. All such certifications are subject to review and approval by the Medical Bureau. Regardless of the nature of the certification, the Medical Bureau may require examination of an applicant for excuse of absence or health leave by the Medical Bureau in order to determine whether there is sufficient medical reason for approval. For the purposes of health related leave:

- a. "Medical Certification" or "Medical Certificate" means the written attestation as to the illness or physical disability of an employee which is executed by a physician who is duly licensed to practice medicine by the State of New York or the state where the applicant resides. Certificates may also be accepted from osteopaths; from dentists or podiatrists, when appropriate and within their professional spheres of competence, and from Christian Science practitioners listed in the Official Christian Science Journal. Certificates that are executed by any other practitioner, regardless of designation, licensure, or registration, are not acceptable. All medical certificates are subject to review and approval by the Medical Bureau and the submission of such a certificate shall not preclude the Medical Bureau from requiring the applicant to undergo examination by the Medical Bureau.
- b. "Self Certification" or "Self Treatment" means the written attestation as to the individual's own illness or physical disability in cases where the employee is not required to visit a physician and "self certification" or "self treatment" is authorized by regulation. All self certifications are subject to review and approval by the Medical

Bureau and the submission of such a certificate shall not preclude the Medical Bureau from requiring the applicant to undergo examination by the Medical Bureau.

Note: In some schools, the employee attests to illness on the regular sick leave application (Form OP 198). In other schools, the employee attests to illness by initialing or signing the record of teacher's absence ("CAR Card" or Form OP 104). Either method constitutes "self certification."

- c. When required, Medical Bureau approval does not, of and by itself, constitute the grant of excuse or leave of absence. Approval by the Medical Bureau signifies only that it would be proper to excuse absence or grant leave provided all administrative requirements have been satisfied and only in accordance with regulations governing excuse of absence or leave for restoration of health. Such excuse or leave may be granted only if the Medical Bureau approves, but it is the Chancellor or community school district which actually grants the leave and not the Medical Bureau.

#### **11. Inquiries**

Inquiries concerning this regulation should be directed to:

Office of Support Services

N.Y.C. Department of Education

65 Court Street - Room 504

Brooklyn, NY 11201

Telephone: 718-935-5878