

Use of Sick Time and Vacation Time

An employer can require that an employee use all accrued paid leave as part of FMLA/CFRA leave. This does not apply to sick days for a caregiver if that kind of absence is not covered by the sick leave policy. Of course, an employer may, if it chooses, allow an employee to exhaust all paid leave before beginning to count the 12 weeks of FMLA/CFRA leave.

Practical Point: Allowing an employee to exhaust all paid leave before beginning to count the 12 weeks of FMLA/CFRA leave is another relatively easy way to support the employee. This can be very helpful to an employee concerned with maintaining health coverage for as long as possible.

● CASE STUDY: Palo Alto Unified School District

Janet is a second grade teacher. She had been job sharing with her partner teacher for eight years when she was diagnosed with breast cancer. Over a period of more than a year, Janet had a mastectomy, radiation and chemotherapy.

Company Profile: The Palo Alto Unified School District (PAUSD) is one of the highest-ranked in the state. Like many districts, it allows teachers to job share, with a pair of teachers being responsible for a single class.

Employee Profile: Janet shared a second grade class with a partner teacher; each was responsible for 50 percent of the workload.

The Diagnosis: When Janet experienced some unusual discomfort following her recovery from breast reduction surgery, she went in for a routine biopsy. The surgery discovered early stage cancer, and Janet's doctor felt that her fairly aggressive form of cancer warranted a mastectomy, as well as chemotherapy and radiation treatments. Janet informed her partner teacher and the school principal that she would need outpatient surgery and possibly further treatment.

Janet's diagnosis and subsequent treatment, coming in the spring when she had already worked with her class for more than six months, had the potential to be highly disruptive to her students. Additionally, the long-term nature of her treatment required a long-term solution.

Company Response: Janet's partner teacher immediately agreed to take over the class full-time. Although she did not wish to teach full-time, Janet's partner recognized that this was the best solution for both Janet and for the classroom, and she knew it was a temporary situation. Janet's principal supported the decision and told the teacher partners to determine what arrangement worked best, provided that the classroom had a qualified, competent teacher at its helm.

Near her last day at school, Janet told her students about the diagnosis, and she sent a note home to their parents. At her request, her principal handled communicating her condition to her colleagues. Janet received tremendous support from students and their families, as well as from co-workers.

Because Janet was under union contract, the financial issues surrounding her leave were clearly delineated. Initially she used her accumulated sick leave to carry her through the end of the school year. Later, she earned differential pay,

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in which the district subtracted the cost of hiring a substitute teacher (in this case, her partner teacher) from her salary, then paid Janet the remainder. Additionally, Janet was able to augment differential pay with payments from her disability insurance.

After being disabled for five working months, Janet was eligible to apply to the teachers' union's Catastrophic Leave Bank. To participate in this program, teachers donate at least one sick leave day per year. Once a teacher is on authorized medical leave for more than five months, he or she can then withdraw sick days. Although she hoped to return to teaching in the fall, Janet's chemotherapy and radiation requirements proved too fatiguing. Using this program, however, Janet was able to receive nearly full pay for the last few months of her treatment.

The Winning Outcome: By February of the following academic year, Janet was visiting her class on an occasional basis, helping her partner teacher as an unpaid volunteer, and getting to know an entirely new group of students. By June, she was back to work 20 percent of the time, with her partner handling the other 80 percent. The following fall, two academic years after her diagnosis, Janet and Elizabeth returned to sharing the time equally.
