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## PREPARING FOR CATASTROPHIC LEAVE REQUESTS DURING THE COVID-19 PANDEMIC

As the reopening of schools in a COVID-19 world is imminently upon us, Schools Legal Service staff cannot help but wonder what challenges await the education community in the coming months. As we look ahead to issues that clients may be facing in the coming months, the possibility of employers with catastrophic leave programs facing increased requests from employees to access this entitlement may be a new symptom of COVID-19, at least in the personnel setting.

Serendipitously, the Education Code already contemplates circumstances such as these by including section 44043.5 regarding catastrophic leave programs.<sup>1</sup> Pursuant to section 44043.5, school districts and county superintendents of schools can adopt a catastrophic leave program to permit employees to donate eligible leave credits to employees who themselves or a family member are suffering from catastrophic illness or injury. However, while section 44043.5 contemplates the need for catastrophic leave, it provides only a vague definition of what is a catastrophic illness or injury and limited practical guidance on how such a program should be structured. Section 44043.5 expressly delegates to governing boards the duty to adopt rules and regulations relating to administration of the program.

Section 44043.5 defines a catastrophic illness or injury as “an illness or injury that is expected to incapacitate the employee for an extended period of time, or that incapacitates a member of the employee’s family which incapacity requires the employee to take time off from work for an extended period of time to care for that family member ....” Based on current public health directives and the reopening school framework provided by California Public Health regarding the isolation protocols for individuals experiencing symptoms of COVID-19, employees still suffering from COVID-19 after exhausting all available leaves may submit a request to the governing board for approval to access catastrophic leave.

We are aware that some of our clients may be presented with this issue as we progress through the months to come. Generally speaking, catastrophic leave donations may only be made from sick or vacation leave credits in a minimum of eight-hour increments, and must be used by the employee accessing the leave within 12 consecutive months. Employers are required to obtain verification of the catastrophic illness or injury pursuant to section 44043.5 (1)(b). It is our best practice recommendation that employers with a catastrophic leave program proactively review their

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<sup>1</sup> Education Code section 87045 pertains to catastrophic leave for community college districts.

policies and regulations on how the program is administered. Some, but definitely not all, practical considerations employers may need to consider could include the following:

1. Are there existing policies and regulations regarding administration of the catastrophic leave program?
2. Which employees may be entitled to seek access to the leave?
3. If there are existing policies and regulations, do they need to be updated?
4. If there are no existing policies and regulations, when could the board reasonably take action to remedy this?
5. Will the board create a general policy regarding catastrophic leave or will requests be reviewed on a case-by-case basis?
6. What group of employees will the employer allow to receive notice of a request for catastrophic leave donations?
7. May identifying information about the employee requesting catastrophic leave donations be included in the notice of the request for leave donations?
8. Will the leave donations be made to an employee-specific donation bank, or will the employer establish a general catastrophic leave bank?
9. Will leave donations across classifications be permitted?
10. Will the eight-hour donation minimum be computed based on the employee's pay rate or the donor's pay rate?
11. Will there be any restriction on how much leave individual employees will be allowed to donate to a requesting party?
12. Will there be a maximum number of donated hours an employee can receive?
13. Will donations be irrevocable or will unused credits be returned to the donating employee?

For many clients, the answers to these questions are unknown because of the infrequent use of catastrophic leave in the past. Fortunately, section 44043.5 gives the board the discretion to clarify these issues through the adoption of specific policies and regulations. To assist clients in addressing these implementation concerns, SLS has collected sample policies from CSBA, and state agencies to provide reference information.

In light of the ever-changing nature of our day-to-day lives because of the ongoing impact of COVID-19, SLS clients that do not currently have a catastrophic leave program may want to consider having a robust discussion with all interested stakeholders on the pros and cons of the leave category.

Please contact us with any questions or concerns related to your catastrophic leave policy so we can assist and help you be prepared during these uncertain times.

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