



JANUARY 13, 2010

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SCARIANO, HIMES & PETRARCA

Please Help Clarify Availability of Sick Leave for Childbirth

Many of you will recall several years ago that Section 24-6 of the School Code was amended to clarify that sick leave could be used for birth, adoption, or placement for adoption. The impetus for this change was a downstate school district that denied a teacher the use of paid sick leave in order to complete adoption of a child in a foreign country. Unfortunately, by including the term "birth" in the amendment, the legislature created some uncertainty in the sick leave statute. In response to the amendment, the Illinois Education Association took the position that because there were no limits in the legislation, a school employee could use as much sick leave as he or she had accumulated whenever the teacher (or teacher's spouse) gave birth, or became involved in the adoption process.

As this clearly was not the legislature's intent, another amendment to Section 24-6 was passed last year, which should have clarified that the use of sick leave following birth (without a doctor's note) was limited to the six weeks immediately following delivery. However, the IEA has taken the position that the 30 sick days may be used anytime in the first year following childbirth. Furthermore, because the IEA claims that the 30 sick days are not granted due to the postpartum condition of the mother or child, their position is that the days can be taken at any time for any reason (e.g. every Friday for 30 weeks). The IEA's position essentially converts sick days to unrestricted paid leave days, but only for teachers who give birth or father a child.

While we worked with Representative Sandra Pihos (R-Glen Ellyn) and LEND in an attempt to clarify that the 30 sick days available for use in connection with childbirth are intended to be for the six weeks following delivery, we were unable to gain additional legislative support at that time. However, Representative Pihos has expressed interest in revisiting this issue to clearly identify when the 30 sick days would be available for use in connection with childbirth.

In order to assist Representative Pihos and LEND, we are asking you to provide us with information:

1. Have any of your local unions advised you that they believe 30 days of paid sick leave are available in the case of childbirth beyond the six weeks following delivery? If so, briefly describe the union's position.
2. Have any of your local unions threatened or filed grievances or litigation if you attempted to restrict paid sick leave (without a doctor's note) to the first six weeks following delivery? If so, what was your response?
3. How many teachers during 2009-2010 have used the new 30 day allotment of sick leave in connection with childbirth?

Please send your responses to Lynn Himes, ahimes@edlawyer.com or John Fester, jfester@edlawyer.com. Thank you for your assistance and we will keep you informed of any proposed changes to the School Code sick leave provisions.

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