

First, we'll see what the ORC says about sick leave for County employees...

- Sick Leave
- Administrative Leave
- Funeral/Bereavement Leave
- Disability Separation

We start by looking once again in Chapter 124 of the Ohio Revised Code, where we find Section 124.38, “Sick Leave”

Chapter 124 | Department of Administrative Services - Personnel
Ohio Revised Code / Title 1 State Government

[Expand All](#) [Close All](#)

Section

- Section 124.01 | Department of administrative services - personnel definitions.
- Section 124.011 | City school districts - civil service commissions.
- Section 124.02 | Director of administrative services and state personnel board of review
- Section 124.03 | State personnel board of review - powers and duties
- Section 124.36 | Cause for removal - teacher terminations.
- Section 124.37 | Police and fire departments reduction in work force
- Section 124.38 | Sick leave.**
- Section 124.381 | Occupational injury leave program.
- Section 124.382 | Sick leave credit - misuse of sick leave

Keep in mind: like vacation & holidays, sick leave is a mandatory subject for collective bargaining, so this ORC Section applies to **non-bargaining unit employees.**

We receive 4.6 hours of sick leave for “each completed 80 hours of service”. Note how this is different from vacation accrual: vacation is accrued “per pay period”, and you can never accrue “more” than your normal accrual rate for the pay period, but sick leave is accrued on **80 hours of service**—so, if an employee works more than 80 hours in a pay period, they also accrue proportionately more sick leave for that particular pay period; if they are in an active pay status for less than 80 hours in a pay period, they’ll earn proportionately less than the 4.6 hours.

Sick Leave can be used for:

- Illness of or injury to the employee
- Pregnancy of the employee
- Employee’s exposure to contagious disease
- Illness, injury or death in the employee’s immediate family



REMEMBER: “Sick Leave” and “FMLA” are **NOT** the same thing. Sick Leave is granted to us by state law, while FMLA is provided by federal law. Paid sick leave can be used while on FMLA, but FMLA by itself is not paid leave. FMLA also uses some different definitions.

For sick leave, what is the definition of “immediate family”?

ORC 124.38 doesn’t define “immediate family”. We can find a definition in Ohio Administrative Code, OAC 123:1-47-01, but remember: OAC officially no longer applies to counties. For bargaining unit employees, it will be defined in the collective bargaining agreement, and for NBU, it is advisable to use the same definition unless it is defined differently in a policy.

Unlike vacation, the statute guarantees that ALL sick leave accrual is unlimited & unused hours automatically carry over from year to year.

Like vacation, sick leave must actually be “earned” before it can be used (i.e., you can’t use sick leave that will be accrued in a pay period **during** that same pay period.)

ALL uses

- Report of absence (electronic or paper)

Medical Attention

- Certification from health care professional

What documentation is required by the statute when we use sick leave?

*** Notice that the ORC doesn't require medical documentation for County employees after an absence of "more than X days" or "X days or more". There is such a rule for state employees, but it's found in the OAC, not the ORC. However, an appointing authority can certainly negotiate this type of requirement into a collective bargaining agreement, and arguably then apply the same to non-bargaining unit employees.

What happens to my sick leave
when I leave County employment
(other than by retirement)?

ORC 124.38

A

If an employee separates employment, we must maintain their sick leave balance for 10 years. If they return to our employment or begin employment with a qualifying public employer in Ohio during that time, they can ask for their balance to be reinstated / transferred.

B

Similar to what we saw in ORC 325.19 with vacation & holidays, ORC 124.38 allows a County appointing authority to have an alternative schedule of sick leave for NBU employees. The same rules apply:

- If the appointing authority has 1 or more collective bargaining agreements, then any alternative sick leave schedule proposed for NBU must not be inconsistent with the terms of at least 1 of the collective bargaining agreements (*for example, requiring documentation after "X" days of absence*)
- If there **isn't** a collective bargaining agreement, then any alternative sick leave schedule proposed for NBU must not diminish the rights guaranteed by statute (*so, maybe in that specific case you can't require documentation after "X" days of absence? Check with County Prosecutor.*)
- In either case, the Board of County Commissioners must be notified of the alternative schedule

Now, we'll move on to Section 124.39, "Unused sick leave"

Chapter 124 | Department of Administrative Services - Personnel

Ohio Revised Code / Title 1 State Government

[Expand All](#) [Close All](#)

Section

Section 124.01 | Department of administrative services - personnel definitions.

Section 124.011 | City school districts - civil service commissions.

Section 124.02 | Director of administrative services and state personnel board of review

Section 124.05 | State personnel board of review - powers and duties.

Section 124.387 | Bereavement leave.

Section 124.388 | Administrative leave.

Section 124.389 | Employee exchange program.

Section 124.39 | Unused sick leave.

Section 124.391 | Donation of paid leave program.

This is an odd title, because the focus is specifically on cash-out of sick leave...

This Section of ORC 124 says:

- An employee with at least 10 years of combined service (with the county, state, and/or political subdivision of the state) may choose **at the time of retirement** to receive a cash-out of their accrued but unused sick leave ORC 124.39 (B)
- The cash-out is equal to $\frac{1}{4}$ of that sick leave balance, capped at no more than 240 hours of cash-out (i.e., $\frac{1}{4}$ of 960 hours = 240) ORC 124.39 (B)
- Such a cash-out eliminates any remaining sick leave balance (**no balance to transfer or reinstate**) ORC 124.39 (B)
- May adopt a policy that: ORC 124.39 (C)
 - a) Allows more than $\frac{1}{4}$
 - b) Allows more than the 240 hour cap
 - c) Allows the # of years of service to be less than 10
 - d) Allows a cash-out for other separations of employment
 - e) Allows more than 1 payment

BUT...any of these changes can only occur as specifically provided by Statute! Per ORC 124.39 (C), this means:

1. If the County appointing authority receives at least ½ of its budget from the General Fund, then the Board of County Commissioners must approve any changes by formal resolution
2. If the County appointing authority receives less than ½ of its budget from the General Fund, then the Board of County Commissioner must be notified in writing of any changes, but a resolution by the Board isn't required
3. Changes can also be negotiated into a collective bargaining agreement

Does the ORC have any guidance for us regarding funeral/bereavement leave for County employees?*

Section 124.387 | Bereavement leave.

Section 124.388 | Administrative leave.

Section 124.389 | Employee exchange program.

Section 124.39 | Unused sick leave.

Section 124.391 | Donation of paid leave program

**This is also a mandatory subject for collective bargaining...*

You might have already noticed this Section of the ORC...

UNFORTUNATELY...ORC 124.387 applies only to State employees, and there isn't a specific ORC Section that provides this same type of leave to County employees.

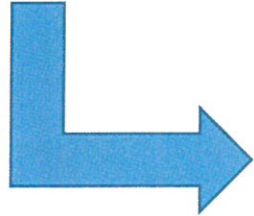
Now, we know that ORC 124.38 allows a County employee to use **sick leave** in the event of the death of an immediate family member...but that's not the same thing as having dedicated paid leave that isn't subtracted from your sick leave balance.

Is this an oversight (like jury duty leave)? **Or is it intentional** (why doesn't ORC 124.39 include ORC 124.387 in the list of "similar provisions" that we can adopt)?

Your guess is as good as mine. This seems like another good example of counties using paid leave as "compensation", like jury duty leave, since there is neither specific authority granted for "funeral/bereavement leave" nor a specific prohibition on such leave...best advice is to negotiate this leave into a CBA and adopt a written policy for NBU.

Now, let's turn our attention to
"Administrative Leave".

Again, you might have already noticed this Section of the ORC...



Section 124.387 | Bereavement leave.

Section 124.388 | Administrative leave.

Section 124.389 | Employee exchange program.

Section 124.39 | Unused sick leave.

This allows an appointing authority to remove an employee from the workplace **with pay, for health or safety reasons that could create a risk to themselves, others, or county property.**

Can be **without pay** but only for up to 2 months **and only IF** the employee has been charged with a **felony**.

But, if the employee isn't ultimately **found guilty of a felony** or doesn't **plead guilty to a felony**, then the employee must be fully reimbursed, with interest!

We'll start by looking at the key difference between a "**disability separation**" and a "**disability retirement**". (You can find great definitions for both in OAC 123:1-47-01)

Both involve a separation from employment due to an illness, injury, or condition which prevents an employee from being able to perform the essential job duties of their position.

Finally, let's look at
"Disability Separation"

A disability **separation** is:

- Either voluntary (initiated by the employee) or involuntary (initiated by the employer)
- Ultimately approved by the employer at its discretion
- Appealable to the State Personnel Board of Review
- Does not provide compensation
- Has a two-year reinstatement to employment right

A disability **retirement** is:

- Voluntary (initiated by the employee)
- Ultimately approved by OPERS at its discretion
- Not appealable to the State Personnel Board of Review
- Provides the employee with some level of disability retirement benefit
- Has a three-year reinstatement period

Oddly, there is no specific ORC Section that covers the process for a “disability separation”. We know that the concept exists, however, because ORC 124.32, “Transfers-Reinstatements”, makes reference to ***reinstatement from*** a disability separation. So...where do we find any useful guidelines for a disability separation? **This is one of the occasions when we rely on the Ohio Administrative Code, even though it no longer applies to counties, in case a decision is appealed to SPBR.**

Let’s do a quick “refresher” on how to navigate to & around the Ohio Administrative Code...



Step 1: Under “LAWS”, select “Ohio Administrative Code”

Ohio Administrative Code

Agency / Division

011 | Apportionment Board

101 | Joint Legislative Ethics Committee

102 | Ohio Ethics Commission

105 | Ohio Legislative Service Commission

107 | Office of the Governor

125 | Department of Administrative Services

125:1 | Department of Administrative Services | Division of Human Resources

125:2 | Department of Administrative Services | Division of EEO for Construction

125:3 | Department of Administrative Services | Office of Information Technology

125:5 | Department of Administrative Services | Division of Purchasing

125:1 | Division of Human Resources

Ohio Administrative Code

Chapter

Chapter 125:1-1 | General Provisions

Chapter 125:1-3 | Position Audits and Changes to Classification Plan

Chapter 125:1-5 | Classified and Unclassified Service Classification

Chapter 125:1-7 | Classification

Chapter 125:1-29 | Performance Evaluation System

Chapter 125:1-30 | Disability Separations - Reinstatement

Chapter 125:1-31 | Removals, Reductions, or Suspensions

Step 2: Select 123:1

**“Department of Administrative Services
– Division of Human Resources”**

Step 3: Select Chapter 123: 1-30

“Disability Separations – Reinstatement”

**Within OAC Chapter 123:1-30,
we find that there are various
“Rules” that apply:**

Chapter 123:1-30 | Disability Separations - Reinstatement

Ohio Administrative Code / 123:1

Expand All

Close All

Rule

Rule 123:1-30-01 | Involuntary disability separation.

Rule 123:1-30-02 | Voluntary disability separation.

Rule 123:1-30-03 | Medical and psychological examinations.

Rule 123:1-30-04 | Right to reinstatement; rights of appeal.

Rule 123:1-30-05 | Disclosure of medical reports.

Rule 123:1-30-06 | Leave benefits for an employee given a disability separation.

From these rules, we can see the following comparisons between “involuntary” & “voluntary” disability separations...

Disability Separation Process	
INVOLUNTARY:	VOLUNTARY:
1) Employer feels employee can't perform essential duties	1) Employee requests
2) "Fitness for Duty" exam	2) Employer may require exam before approving
3) Hearing held for employee to respond to exam findings	3) No hearing required
4) Employer makes decision	4) Not appealable to SPBR
5) Appealable to SPBR	5) 2-Year reinstatement period
6) 2-Year reinstatement period	

Reinstatement from Disability Separation (either voluntary or involuntary):

OAC 123:1-30-04

- Employee must make written request during the reinstatement period, to include “substantial, credible medical evidence”; cannot be sooner than 3 months from date employee was last in active work status.
- Employer either reinstates employee based on their own provided medical evidence **OR** schedules a “fitness for duty” exam (employer selects health care provider for the exam).
- If an exam is held, employer makes determination based on results; if the initial determination is to deny reinstatement, a hearing must be held for the employee to contest the exam findings & present additional evidence.
- Employer makes final decision after the hearing; if reinstatement is denied, subsequent requests for reinstatement are limited to once every 3 months after a reinstatement denial.
- If the employee **is** reinstated, they have the right to return to their former classification; if that classification no longer exists, they must be reinstated to a “similar” classification.

Reinstatement from Disability Retirement:

ORC 124.35 & ORC 124.362

- OPERS notifies former employer that they have determined that the former employee is no longer disabled/incapable of work
- The employee must then be reinstated to their same or similar position & salary
- Reinstatement period for a disability retirement is 3 years

Who pays for
the “fitness-
for-duty”
exam?

The appointing authority must pay for the exam (OAC 123:1-30-03 (C)), **UNLESS** the employee fails to attend and does not have a valid extenuating circumstance, in which case the employee is responsible for the cost (OAC 123:1-30-03 (D)).

The employee may be charged with insubordination and subject to disciplinary action (OAC 123:1-30-03 (D)), but make sure any notice to the employee of the scheduled exam makes it clear that the employee is required to attend, participate, & release the findings.

What if the
employee attends
but refuses to
participate or to
release the findings?



REMEMBER: “Disability Separation” and “ADA” are **NOT** the same thing. ADA is provided by federal law, & requires reasonable accommodation for covered disabilities. A disability separation should not be initiated until an employee has exhausted all available FMLA and all paid leave, and all reasonable accommodations have been made/attempted/reviewed (including possibly additional unpaid leave). Consult the County Prosecutor’s Office.