

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 375 Campos – As Amended May 4, 2015

SUBJECT: School employees: sick leave: paternity and maternity leave.

SUMMARY: Requires certificated school employees on maternity or paternity leave to receive differential pay. Specifically, **this bill** specifies:

- 1) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness, accident, maternity leave or paternity leave for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed; and, specifies an employee shall not be provided more than one five-month period per illness, accident, maternity leave or paternity leave. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.
- 2) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.
- 3) To the extent that the changes made by this measure conflict with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, the changes made by this measure shall not apply until expiration or renewal of that collective bargaining agreement.

EXISTING LAW:

- 1) Specifies during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee. Specifies the following:
 - a) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.

- b) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code (EC) 44977)
- 2) Specifies that Section 44977 shall not apply to any school district which adopts and maintains in effect a rule which provides that when a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he shall receive 50 percent or more of his regular salary during the period of such absence and nothing in Section 44977 shall be construed as preventing the governing board of any district from adopting any such rule. Notwithstanding the foregoing, when a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education. Nothing shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons requiring certification qualifications. This shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district. (EC 44983)
- 3) Authorizes eligible employees to take up to 12 weeks of unpaid family and medical leave, including leave for the birth or adoption of a child, leave to care for specified family members with a serious health condition, or for the employee's own serious health condition.

FISCAL EFFECT: This bill is keyed nonfiscal; however the Rules Committee has deemed that this bill shall be referred to the Appropriations Committee upon passage of this committee.

COMMENTS: The Moore-Brown-Roberti Family Rights Act (CFRA) is the state-law equivalent of the federal Family and Medical Leave Act (FMLA). Both acts provide for up to 12 weeks of unpaid family and medical leave for public and private employees. This bill requires school employers to pay differential pay for certificated employees who take the 12 week FMLA maternity or paternity leave. Differential pay is calculated by subtracting the cost of a substitute employee from the certificated employee's salary. As an example, if the certificated employee made \$50,000 and the substitute cost \$35,000, then the certificated employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick time.

According to the author, currently, certificated school employees can only take up to six or eight weeks of paid leave when they have a baby. Six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take *unpaid* leave.

Disability Leave and FMLA: Typically, mothers are on pregnancy disability leave during the first 6-8 weeks, or longer, after a baby's birth. During this time, certificated employees use their sick leave and when their sick leave is exhausted, they receive differential pay for the remaining time. Once the 6-8 week disability leave period is over and the employee's doctor deems the

employee able to return to work, then the employee starts the 12 week leave period under FMLA. During this time, the certificated employee may be able to use accrued sick leave, but once that time is exhausted, the certificated employee is unpaid for the remaining weeks. This bill would extend the differential pay through the 12 week leave period under FMLA for both mothers and fathers.

Parental Leave in the United States and Other Countries: A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, 97 percent provide paid maternity leave for women. Only four out of the 167 countries studied did not: Lesotho, Papua New Guinea, Swaziland and the United States. Australia was also listed in this study as not providing paid maternity leave, but their policy recently changed and parents there currently receive 18 weeks of paid leave. While these four countries did provide some form of maternity leave there was no requirement that it be paid leave. U.S. federal law provides for up to three months of *unpaid* maternity and/or paternity leave. The U.S. is the only industrialized nation that doesn't mandate that parents of newborns get paid leave.

Examples of countries with progressive paid maternity/paternity leave laws include Ireland with 6.5 months of paid leave, Italy with five months of paid leave, England with nearly 10 months of paid leave, and Sweden with nearly 16 months of paid leave.

Arguments in Support: The California Teachers Association supports the bill and states, "Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship impacts a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy.

Overall, paid family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they're more likely to choose to remain in the labor market, and paid parental leave is associated with higher employment in economies around the world. With today's modern and creative family structures, paternity leave after the birth of a child means both caregivers will more involved in a child's direct care nine months later — changing diapers, feeding, bathing — than a parent who doesn't take leave. Also, paternity leave results in more competent and committed parents later in their children's lives, shared responsibilities with long term societal benefits."

Previous Legislation: AB 1562 (Gomez) from 2014, which was held on the Senate Appropriations Suspense file, would have amended existing law governing unpaid family and medical leave with respect to public or private school employees, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees
California Democrats for Education Reform

California Federation of Teachers
California Teachers Association
Luther Burbank Education Association
San Jose Teachers Association
South Bay Labor Council
United Teachers of Santa Clara
Several individuals

Opposition

None on file.

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