

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION  
Al Muratsuchi, Chair  
AB 2901 (Aguiar-Curry) – As Introduced February 15, 2024

**[Note: This bill was double-referred to the Assembly Committee on Higher Education and will heard by that Committee as it relates to issues under its jurisdiction.]**

**SUBJECT:** School and community college employees: paid disability and parental leave

**SUMMARY:** Requires K-12 public schools and community college districts to provide up to 14 weeks of paid leave for employees experiencing pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions. Specifically, **this bill:**

*K-12 public schools*

- 1) Requires a public school employer to provide for a leave of absence from duty for a certificated or classified employee of the public school employer who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions. Requires that the length of the leave of absence, including the date on which the leave commences and the date on which the employee shall resume duties, be determined by the employee and the employee's physician. Requires the leave of absence to be with full pay, subject to a maximum of 14 weeks. Prohibits a leave of absence taken from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws. Authorizes the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.
- 2) Requires disabilities caused or contributed to by pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions, for all job-related purposes, be temporary disabilities, and be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by a public school employer.
- 3) Requires written and unwritten employment policies and practices of a public school employer be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.
- 4) States that nothing in this measure shall be construed to diminish the obligation of a public school employer to comply with any collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative that provides greater disability or parental leave rights to employees than the rights established under this measure.

*Community college districts*

- 5) Requires the governing board of a community college district to provide for a leave of absence from duty for an academic or classified employee of the community college district

who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions. Requires the length of the leave of absence, including the date on which the leave commences and the date on which the employee resumes duties, to be determined by the employee and the employee's physician. Requires the leave of absence be with full pay, subject to a maximum of 14 weeks. Prohibits a leave of absence from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws. Authorizes the paid leave may begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.

- 6) Requires that disabilities caused or contributed to by pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions, for all job-related purposes, be temporary disabilities, be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by a community college district.
- 7) Requires that written and unwritten employment policies and practices of a community college district be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.
- 8) States that nothing in this measure shall be construed to diminish the obligation of a community college district to comply with any collective bargaining agreement entered into by a community college district and an exclusive bargaining representative that provides greater disability or parental leave rights to employees than the rights established under this measure.

#### **EXISTING LAW:**

- 1) Under Fair Employment and Housing Act (FEHA) and associated regulations, it is an unlawful employment practice, unless based upon a bona fide occupational qualification, for an employer to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work. The employee is entitled to utilize any accrued vacation leave during this period of time. (Government Code (GC) 12945) Also under the FEHA, reasonable accommodation of a disability related to pregnancy can include an extended leave of absence.
- 2) The California Family Rights Act (CFRA) provides certain employees up to 12 weeks of unpaid, job-protected leave a year for the purpose of bonding with a child, caring for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. (GC 12945.2)
- 3) Requires that school districts provide for a leave of absence from duty for a certificated employee of the school district who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom. Requires that the length of the leave of absence be determined by the employee and the employee's physician. (Education Code (EC) 44965)

- 4) Requires that school districts provide for a leave of absence from duty for a classified employee of the school district who is required to be absent from duties because of pregnancy, childbirth, and convalescence therefrom. Requires that the length of the leave of absence be determined by the employee and the employee's physician. (EC 45193)
- 5) Specifies that 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, 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. Specifies the following:
  - a) Requires the sick leave, including accumulated sick leave, and the five-month period to run consecutively; and
  - b) Limits the benefit to 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. (EC 44977)
- 6) Requires that certificated and classified employees participate in the differential pay program receive no less than 50% of their regular salary during the period of such absence. (EC 44983)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author, "Today, teachers in California do not receive pregnancy leave. This forces teachers to deplete all of their sick leave and then receive reduced 'differential' pay where they effectively pay for their own substitute teacher. This practice makes it hard for pregnant teachers to care for their families and has long term financial consequences. 70% of teachers are women, and studies have shown that the women in the teaching ranks will receive nearly \$100,000 less than their male counterparts in their retirement because they are forced to use up all of their accrued sick leave. At a time when our educators are leaving this vital profession due to the pressures of the pandemic, and college students seek other paths for their careers, AB 2901 takes a necessary step to invest in our educators by giving them 14 weeks of paid pregnancy leave. AB 2901 will help to attract and retain educators. But, more importantly, it will grant the basic human right to care for one's child to the people we count on most to care for our children and grandchildren."

***Paid Family Leave (PFL).*** The PFL program extends disability compensation to individuals (male or female) who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child, or a child in connection with adoption or foster care placement. The PFL program is a component of the State Disability Insurance (SDI) program and workers covered by the SDI program are also covered for this benefit. Employees may only be eligible for the PFL program if they are covered by the SDI program through a negotiated

agreement with the State. If an employee does not pay into the SDI program, he or she would not be eligible to receive disability compensation under PFL.

**Pregnancy Disability Leave and FMLA:** Typically, mothers are on pregnancy disability leave during the first 6-8 weeks, or longer, after a baby's birth. They are also entitled, under the FMLA and state law, to take 12 weeks of additional leave for bonding.

Under current law, during pregnancy disability leave certificated school district employees use any sick leave, and once it is exhausted are entitled to differential pay (as described above). During their subsequent FMLA leave, they are also entitled to use sick leave and then receive differential pay. Differential pay may be no less than 50% of the employee's salary.

**Differential pay.** 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. Current law requires that certificated employees of school districts be provided with differential pay during their FMLA 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.

The chart below provides an overview of current law and the effect of this measure on both certificated and classified employees who are pregnant and give birth. It is important to note that 1) it is a broad summary of a highly complex system and does not reflect all requirements and options, 2) local practice may vary significantly, since some of these benefits can be modified by collective bargaining agreements, and 3) it does not include all types of leave or apply to all employees, 4) it may not apply to all education employers. This chart is provided for summary purposes and should not be used to guide local decision-making.

	Pregnancy Disability Leave (PDL) – up to four months unpaid		California Family Rights Act (CFRA) Bonding Leave – up to 12 weeks unpaid
Current law	Can use sick leave and then differential pay;* SDI (if paying in)		Can use sick leave and then differential pay; SDI (if paying in)
AB 2901	Full pay for 14 weeks	From 14 weeks up to four months can use sick leave and then differential pay; SDI (if paying in)	Can use sick leave and then differential pay; SDI (if paying in)

FMLA leave runs concurrently with PDL and CFRA.

*\*Employees are eligible for differential pay after sick leave is exhausted and for up to five months.*

***What do school districts currently provide for pregnancy-related leave?*** The pregnancy-leave compensation provided to school district employees (beyond differential pay as required by law) varies considerably based on local bargaining agreements and participation in disability insurance programs.

It is unclear how many school districts participate in SDI, but some as of 2021, including the Los Angeles Unified School District, do. Some districts do not participate in SDI but contract for private disability insurance, and some do not provide any such benefit. At least two school districts, the Grossmont Union High School District and the Palm Springs Unified School District, had agreed through collective bargaining to provide six weeks of paid maternity leave.

***Parental leave in the United States and other countries.*** A 2019 study by the Institute for Women's Policy Research found that paid maternity leave keeps women in the workforce and lowers their need for public assistance. Most developed nations pay new mothers at least half of their salary during their time off, according to a December 2022 report by the Organization of Economic Cooperation and Development (OECD) that studied maternity leave in its 38 member countries, of policies in place as of April 2022. On average, maternity leave in the OECD countries lasts 18.5 weeks. Only one developed country — the United States — offers no national paid maternity leave, although some individual states and employers do offer it.

A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, 97% 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 changed and parents there currently receive 18 weeks of paid leave.

Examples of countries with progressive paid maternity/paternity leave laws as of 2020 include Ireland with 6.5 months of paid leave, Italy with 5 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 states, “Establishing pregnancy disability leave will help retain educators during a historic educator shortage. Studies show that while educators enter the profession to help students and make a difference, many today are feeling acute levels of stress and are considering leaving the profession. This retention problem is made worse because of the lack of paid disability leave, as many are forced to leave the profession when they are pregnant and often do not return. This compounds significant challenges to educator retention and recruitment, in an environment where California schools are having widespread difficulty hiring and retaining educators, due in part to low pay, high housing costs and other rising costs of living. Under current state law, educators cannot earn any paid pregnancy leave. Only after they have used all their sick leave are educators eligible to receive differential pay for up to five months when they cannot work due to pregnancy-related disabilities. Differential pay is the educator’s regular salary minus the cost of their substitute.”

***Arguments in opposition.*** The Association of California School Administrators states, “AB 2901 would require LEAs to provide up to 14 weeks of full pay for pregnancy-related leaves of absence taken by certificated, academic and classified employees serving grades K-14. This leave may be taken before or after the pregnancy-related condition, and the employee is not required to use any sick leave prior to accessing this leave. There are no limitations on how frequently the leave may be taken, nor are there any required hours/weeks of employment to be

completed before the employee qualifies for leave. Regrettably, the additional costs of this paid leave would be carried by the LEA and could easily reach the mid to high tens of millions of dollars annually between employee salary, benefits, and long-term substitute teaching positions needed for credentialed employees. It also would result in greater pension liability as sick leave accrual would count towards final benefit calculations. Given the nature of school finance, AB 2901 would draw from a finite pool of resources at the same time that the state is facing a significant budget deficit. LEAs are also implementing new student services such as Universal Transitional Kindergarten, school meals programs, and Extended Learning Opportunity Programs.”

**Related legislation.** AB 500 (Gonzalez) of the 2019-20 Session would have required that school districts, charter schools, and community colleges provide at least six weeks of full pay for pregnancy-related leaves of absence taken by certificated, academic, and classified employees. This bill was vetoed by the Governor with the following message:

Providing every California worker with paid family leave is a noble goal and a priority for my administration. However, this bill will likely result in annual costs of tens of millions of dollars that should be considered as part of the annual budget process and as part of local collective bargaining. Moreover, this proposal should be considered within the broader context of the Paid Family Leave Task Force, which is assessing increased paid family leave for all of California's workers.

AB 2012 (Medina) Chapter 994, Statutes of 2018 requires that a person employed in a position requiring certification qualifications, a person employed in an academic position, or a classified employee receive no less than 50% of his or her regular salary during parental leave, after sick leave has been exhausted, regardless of the type of parental leave pay system used by the school district or community college district.

AB 568 (Gonzales-Fletcher) of the 2017-18 Session would have required that school districts and community colleges provide at least six weeks of full pay for pregnancy-related leaves of absence taken by certificated, academic, and classified employees. This bill was vetoed by the Governor, who stated:

I have signed two previous bills, AB 2393 of 2016 and AB 375 of 2015, that allow these employees to receive differential pay for maternity and paternity leave. I believe further decisions regarding leave policies for school employees are best resolved through the collective bargaining process at the local level. I would also encourage districts to consider participating in the State Disability Insurance program that would allow these employees to receive pay in addition to what is already being provided.

AB 375 (Campos) Chapter 400, Statutes of 2015, requires certificated school employees on maternity or paternity leave to receive differential pay after exhausting accrued sick leave.

AB 2393 (Campos), Chapter 883, Statutes of 2016, allowed school district classified employees and community college academic and classified to receive differential pay.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Afscme CA  
California Breastfeeding Coalition  
California Child Care Resource and Referral Network  
California Employment Lawyers Association  
California Federation of Teachers Afl-cio  
California Labor Federation, Afl-cio  
California Retired Teachers Association  
California School Employees Association  
California State Teachers' Retirement System  
California Teachers Association  
California Wic Association  
California Women's Law Center  
California Work & Family Coalition  
Caring Across Generations  
Center for Community Action and Environmental Justice  
Center for Workers' Rights  
Children Now  
Citizens for Choice  
Delta Kappa Gamma International - Chi State  
Electric Universe  
Equal Rights Advocates  
Faculty Association of California Community Colleges  
Friends Committee on Legislation of California  
Human Impact Partners  
Jewish Center for Justice  
LA Alliance for A New Economy  
LA Best Babies Network  
Legal Aid At Work  
National Council of Jewish Women Los Angeles  
National Partnership for Women & Families  
National Women's Political Caucus of California  
Orange County Equality Coalition  
Parent Voices California  
Public Counsel  
Reproductive Freedom for All  
State Superintendent of Public Instruction Tony Thurmond  
Worksafe

**Opposition**

Association of California School Administrators  
California Association of School Business Officials (CASBO)

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