

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 2012 (Medina) – As Introduced February 1, 2018

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

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

**SUMMARY:** 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.

**EXISTING LAW:**

- 1) Requires, under the California Family Rights Act (CFRA), that certain employees receive up to 12 weeks of unpaid, job-protected leave a year for the purpose of bonding with a child, care 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)
- 2) Permits both certificated and classified employees to use accrued sick leave for purposes of parental leave for a period of up to 12 workweeks.
- 3) Provides that certificated employees, after having exhausted their accrued sick leave during their 12 weeks of parental leave, be entitled to additional compensation during the remainder of that leave, pursuant to one of the following two systems adopted by school districts:
  - a) Differential pay: During each school year, for a period of five school months, the amount deducted from the salary due the certificated employee may 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. (EC 44977)
  - b) 50% of salary: Exempts school districts from the above system if they have adopted a system which provides, for a period of five school months or less, 50 percent or more of a certificated employee's regular salary. (EC 44983)
- 4) Provides that, after classified employees have exhausted their accrued sick leave during their 12 weeks of parental leave, they are entitled to additional compensation during the remainder of that leave, pursuant to one of the following two systems adopted by school districts:
  - a) Differential pay: For a period of five months or less, the amount deducted from the salary due a classified employee for any month in which the absence occurs may not

exceed the sum which is actually paid a substitute employee employed to fill his or her position during the absence. (EC 45196)

- b) 50% of salary: Exempts from the above requirement school districts which adopt a system in which a classified employee is once a year credited with 100 working days of paid sick leave, including 12 days of sick leave as required by law, those days be compensated at not less than 50 percent of the employee's regular salary. (EC 45196)
- 5) Under the 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. (GC 12945) Also under the FEHA, reasonable accommodation of a disability related to pregnancy can include an extended leave of absence.

**FISCAL EFFECT:** This bill has been keyed non-fiscal by the Office of Legislative Counsel.

**COMMENTS:**

***Need for the bill.*** The author's office states: "AB 2393 (Campos 2016) provided up to 12 weeks of paid parental leave for all school employees. However, the bill overlooked part-time faculty members and part-time classified staff who work in differential pay districts. Those members, if they exhaust their sick leave, would receive no pay due to the substitute cost being the same as their current salary. As such, part-time faculty and part-time classified staff who exhaust their sick leave while on parental leave would not qualify for differential pay. AB 2012 will help close the loophole to ensure that part-time faculty and part-time classified staff working in differential pay districts receive no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave."

***Differential pay.*** The 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 and classified employees of school districts be provided with differential pay during their FMLA leave, or be compensated with at least 50% of their salary, irrespective of the cost of a substitute. School districts may choose either system.

Differential pay is calculated by subtracting the cost of a substitute employee from the certificated or classified employee's salary. For 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 parental leave, after exhausting all accrued sick time. There is no minimum compensation threshold.

For some employees employed by districts which do provide differential pay, the cost of providing a substitute to assume their duties is equal to their salary. As a result, they receive no differential pay. This bill would create a "floor" for differential pay equal to half of the employee's salary, irrespective of the cost of a substitute for that employee.

**Why not establish a differential pay floor for pregnancy disability leave?** When medically necessary, certificated and classified employees are entitled to leave for pregnancy, miscarriage, childbirth, and recovery therefrom.

Under current law, during pregnancy disability leave certificated and classified school district employees use any sick leave, and once it is exhausted are entitled to differential pay or 50% of their salary, depending upon the choice of their school district. During their subsequent parental leave they are also entitled to use sick leave and then receive differential pay or 50% of salary, depending upon the choice of their school district. The chart below provides an overview of current law:

| Pregnancy disability leave (variable time)   | Parental leave (12 weeks)  |
|--|--|
| <ul style="list-style-type: none"> <li>• Use any sick leave, then receive differential pay or 50% of salary (depending upon district), or</li> <li>• State disability (SDI) or other disability plan, <u>if</u> provided by the school district and employee is participating</li> </ul> | Use any sick leave, then receive differential pay or 50% of salary (depending upon district) |

This bill creates a floor of 50% of salary for certificated and classified employees employed in a school district which provides differential pay, during parental leave only. These employees are also entitled to differential pay during pregnancy disability leave, but this bill does not establish a floor of 50% of salary for this type of leave. ***The Committee may wish to consider*** whether to extend the requirement for a minimum of 50% of salary to employees using differential pay during pregnancy disability leave.

***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. 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.

***Prior legislation.*** AB 568 (Gonzalez) of this 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, 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 employees to receive differential pay when on parental leave.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Federation of Teachers (sponsor)  
American Civil Liberties Union of California  
American Federation of State, County and Municipal Employees  
California Teachers Association  
Communication Workers of America, District 9  
Faculty Association of California Community Colleges  
Silicon Valley Leadership Group

**Opposition**

None on file

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