

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
AB 500 (Gonzalez) – As Introduced February 13, 2019

**[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: paid maternity leave

**SUMMARY:** Requires 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. Specifically, **this bill:**

- 1) Requires that at least six weeks of a pregnancy and childbirth related leave of absence be with full pay for certificated and classified employees of school districts and charter schools, and for academic or classified employees of community colleges.
- 2) States that the paid leave may begin before and/or continue after childbirth, provided that the employee is disabled by pregnancy, childbirth, or a related condition.
- 3) Stipulates that paid leave shall not diminish the employee's right to take, or be compensated for, other leaves of absence, including disability leave, sick leave, bonding leave, vacation leave, and pregnancy leave under the California Fair Employment and Housing Act (FEHA), even when other leaves are taken due to illness or injury resulting from pregnancy, miscarriage, childbirth, or recovery therefrom.
- 4) Requires charter schools to treat disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery from those conditions as, for all job-related purposes, temporary disabilities, and to treat them as such under any health or temporary disability insurance or sick leave plan available in connection with employment.
- 5) Requires written and unwritten employment policies and practices of charter schools to be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.

**EXISTING LAW:**

- 1) Under 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.
- 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, 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)

- 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. (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) The sick leave, including accumulated sick leave, and the five-month period run consecutively.
  - 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 which participate in the differential pay program receive no less than 50 percent of their regular salary during the period of such absence. (EC 44983)

**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: "California is facing a significant teacher shortage, with 80 percent of districts reporting difficulty in filling positions in the 2017-2018 school year, according to research by the Learning Policy Institute. There simply haven't been enough people interested in pursuing the profession and obtaining the proper credentials at the rate needed to fully serve California's students. Even when teachers are hired, schools struggle to retain them, which negatively impacts students and imposes additional costs on the districts."

Existing law provides that schools must allow their female employees to take unpaid leave for pregnancy, childbirth or related medical conditions. After employees have exhausted vacation (if applicable) and sick leave, then they may receive differential pay—the remainder of their salary after the school's costs of paying for a substitute—for a period of up to five months.

However, unpaid leave causes many women to struggle due to the loss of income and unable to take the necessary time off during their pregnancies or after childbirth for recovery. The hard-working employees who help our students thrive should not have to shoulder the burden of choosing between having children and paying the bills. Paid leave benefits have been shown to help increase worker retention and reduce turnover, particularly for women. Moreover, being able to take necessary time off before and after a pregnancy is crucial for the health of both the mother and the child, evidenced by positive outcomes such as healthier birth weights, decreased premature births, and decreased infant mortality rates.

By requiring school and community college districts to provide six weeks of fully paid pregnancy leave, this bill will help female employees working in K-14 settings to take necessary time off without sacrificing their financial security. Furthermore, this bill will finally end the discriminatory practice of giving female employees no choice but to deplete their sick leave and other paid time off in order to have children.

AB 500 has been introduced at a time when California schools are having enormous problems hiring and retaining teachers, in part because of low pay, skyrocketing housing costs, and other rising costs of living. This bill will also help ensure school districts can retain valued school and academic employees in the workforce after they've had children. This bill would not only eliminate a major inequity, but also create another incentive for young women to pursue a career in education."

***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;* 2) SDI (if paying in)		Can use sick leave and then differential pay; SDI (if paying in)
AB 500	Full pay for six weeks	From six 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 under current law and under AB 500			

*\*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, 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, have agreed through collective bargaining to provide six weeks of paid maternity 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.

**Arguments in support.** The California Federation of Teachers writes: “Many school employees are not covered by the state disability insurance (SDI) and thus do not receive any type of paid leave under that program, unlike private employees. This means female employees are forced to exhaust their sick or vacation days for pregnancy and childbirth, which depletes their accrued leave and limits their ability to fully recuperate prior to returning to work. Female school employees are left with the decision to either ‘schedule’ pregnancies based on the school calendar, or try to get by without pay. This current practice discriminates against women as only they are required to deplete their leave balances in order to bear children.”

**Arguments in opposition.** The Riverside County Superintendent of Schools writes: “Our opposition to the bill is based on two factors: 1) the fiscal impact that it would have on local education agencies; and 2) the complexity it would add to an already complicated set of employee-leave programs.

The additional leave benefit provided by AB 500 would create the potential of an employee being out of work and in a full or partial pay status from September through April – almost an entire academic year.

In its analysis of AB 568 (Gonzalez, 2017) a previous iteration of the bill, the Department of Finance estimated the fiscal impact as follows: ‘This bill is likely to result in significant cost pressures in the tens of millions to hundreds of millions of dollars in Proposition 98 General Fund for LEAs to provide maternity leave for at least six weeks at full pay and to provide substitute employees for that period, if needed. If one percent of K-14 employees took six weeks of leave at full pay, the cost could range from \$43 million to \$163 million Proposition 98 General Fund annually.’”

**Prior legislation.** 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 Governor Brown, 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**

California Federation of Teachers (co-sponsor)  
Faculty Association of California Community Colleges (co-sponsor)  
American Civil Liberties Union of California  
California Employment Lawyers Association  
California Labor Federation, AFL-CIO  
California School Employees Association

**Opposition**

Association of California Community College Administrators  
Association of California School Administrators  
California Association of School Business Officials  
Riverside County Superintendent Of Schools  
Riverside County Public K-12 School District Superintendents  
Schools Excess Liability Fund

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