

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 568 (Gonzalez Fletcher) – As Amended March 27, 2017

[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 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 for certificated and classified employees of school districts, and for academic or classified employees of community colleges, be with full pay.
- 2) Stipulates 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 taken per the above 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.

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 most districts this year reporting difficulty in filling positions, according to research by the Learning Policy Institute. Young individuals are simply not being attracted to the profession and obtaining the proper credentials at the rate needed to fully serve California's students. One reason for this is a lack of incentives for young individuals to consider entering the profession and staying in it. For instance, teachers face a difficult job for typically low pay and may struggle to find housing. Schools have also struggled to retain teachers, 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, and that after having exhausted vacation (if applicable) or sick leave, the employee 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 means female employees may be left struggling due to the loss of income, and not be able to afford to take the necessary time off during their pregnancies or after childbirth for recovery. Being able to take this time off is important for the health of the mother and the child, as it has been linked to healthier birth weights, decreased premature births and decreased infant mortality rates.

Paid leave benefits have been shown to help increase worker retention and reduce turnover, particularly for women. This bill will help keep valued school employees in the workforce after having children, and will end the current discriminatory practice that forces female employees to utilize their sick leave in order to bear children.”

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.

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.

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.

The chart below provides an overview of current law and the effect of this measure on both certificated and classified employees. It is important to note that 1) it is a broad summary and does not reflect all requirements and options, and 2) local practice may vary significantly, since some of these benefits can be modified by collective bargaining agreements.

	Disability leave (~ 6 weeks)	FMLA leave (12 weeks)
Current law	<ul style="list-style-type: none"> • Use any sick leave, then receive differential pay, or • State disability (SDI) or other disability plan, <u>if</u> provided by the school district 	Use any sick leave, then receive differential pay
AB 568	Full pay	Use any sick leave, then receive differential pay

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, recently 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 California Association of School Business Officials (CASBO) writes: “CASBO agrees with the intent of the author to provide financial security and accommodation for specified time of leave to school employees. However, establishing a new benefit with a minimum of 6 weeks paid leave and no cap provided, makes it difficult for school districts to budget for a new benefit leave program, including the cost for a substitute teacher or classified staff. Without a direct state funding source, this adds to the school district’s financial burden as a new liability to be absorbed within an already constrained fiscal environment.”

Recommended amendments. *Staff recommends* that this bill be amended as follows:

- 1) Make the description of the conditions necessitating a pregnancy-related disability leave consistent between certificated and classified employees in both the school district and community college section.
- 2) In order to provide equal rights to paid maternity leave to employees of charter schools, extend the requirements to provide six weeks of paid leave to charter schools.

Prior legislation. 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)
Service Employees International Union (co-sponsor)
American Civil Liberties Union of California
American Federation of State, County and Municipal Employees
California Employment Lawyers Association
California Labor Federation
California School Employees Association
California Teachers Association
California Teamsters Public Affairs Council
EdVoice
Faculty Association of California Community Colleges
Legal Aid at Work
Numerous individuals

Opposition

California Association of Joint Powers Authorities
California Association of School Business Officials
Schools Excess Liability Fund

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