

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2012 (Medina) – As Introduced February 1, 2018

**[Note: This bill is doubled referred to the Assembly Committee on Education and will be heard by that Committee as it relates 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 will receive no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave, regardless of the type of differential pay system used by the school district or community college district.

**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 shall be entitled to utilize any accrued vacation leave during this period of time. (Government Code (GC) Section 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 Sect. 12945.2.)
- 3) Authorizes, during each school year, a person employed by a school district in a position requiring certification qualifications to use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks, and (Education Code (EC) Section 44977.5):
  - a) Requires, when a person employed in a position requiring certification qualifications in school districts that use a certain differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, the amount deducted from the salary due to the employee for any of the remaining portion of the 12-workweek period in which the absence occurs to not exceed the sum that is actually paid, or that would have been paid, to a substitute employee to fill his or her position during his or her absence; and,
  - b) Requires, when a person employed in a position requiring certification qualifications in school districts that use a certain other differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of

- parental leave, that the person is compensated at no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave.
- 4) Authorizes, during each school year, a classified employee of a school district to use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks, and (EC Section 45196.1):
    - a) Requires, when a classified employee of school districts that use a certain differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, the amount deducted from the salary due to the classified employee for any of the remaining portion of the 12-workweek period in which the absence occurs to not exceed the sum that is actually paid to a substitute employee employed to fill his or her position during his or her absence; and,
    - b) Requires, when a classified employee of school districts that use a certain other differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, that the employee is compensated at no less than 50% of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.
  - 5) Authorizes, during each school year, an employed in an academic position in community college districts to use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks, and (EC Section 87780.1.):
    - a) Requires, when a person employed in an academic position in community college districts that use a certain differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, the amount deducted from the salary due to the employee for any of the remaining portion of the 12-workweek period in which the absence occurs to not exceed the sum that is actually paid, or that would have been paid, to a temporary employee employed to fill his or her position during his or her absence; and,
    - b) Requires, when a person employed in an academic position in community college districts that use a certain differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, that the person is compensated at no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave.
  - 6) Authorizes, during each school year, a classified employee of a community college district to use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks, and (EC Section 88196.1.):
    - a) Requires, when a classified employee of community college districts that use a certain differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, the amount deducted from the salary due to the classified employee for any of the remaining portion of the 12-workweek period in which the absence occurs to not exceed the sum that is actually paid to a substitute employee employed to fill his or her position during his or her absence.

- b) Requires, when a classified employee of community college districts that use a certain other differential pay system has exhausted all available sick leave and continues to be absent from his or her duties on account of parental leave, that the employee is compensated at no less than 50% of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.
- 7) Requires that any employee has the right to use sick leave and to obtain differential pay for absences necessitated by pregnancy, miscarriage, childbirth, and recovery. (EC Section 44978)

**FISCAL EFFECT:** Unknown.

**COMMENTS:** *Need for the bill.* According to the author, "In 2016, Assemblymember Campos authored legislation (AB 2393) that provided up to 12 weeks of paid parental leave for all K-12 and community college employees. However, her legislation overlooked part-time faculty members who work in differential pay districts. My bill will ensure that part-time faculty working in differential pay districts receives no less than 50% of their regular salary for the remaining portion of the 12-workweek period of parental leave."

*Background.* 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 school and community college employers to pay differential pay for certificated employees, community college faculty, and classified employees who take the 12 week FMLA maternity or paternity leave.

*Differential Pay.* 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 six to eight 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 district employees use any sick leave, and once it is exhausted are entitled to differential pay. During their subsequent FMLA leave they are also entitled to use sick leave and then receive differential pay.

*Arguments in support.* The California Federation of Teachers writes that "...faculty 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 who exhaust their sick leave while on parental leave would not qualify for differential pay...AB 2012 will close this loophole."

*Prior legislation.* AB 568 (Gonzalez Fletcher, 2017), would have required 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 legislation was vetoed by the Governor.

AB 2393 (Campos), Chapter 883, Statutes of 2016. Required classified school employees and community college instructors on parental leave to receive up to 12 weeks of differential pay, as specified, and clarified provisions requiring certificated school employees on parental leave to receive differential pay.

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Federation of Teachers (Sponsor)

**Opposition**

None on file

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