

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Jose Medina, Chair
AB 568 (Gonzalez Fletcher) – As Amended March 27, 2017

[Note: This bill is double-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: paid maternity leave

SUMMARY: Requires a leave of absence for pregnancy, as currently granted to a community college employee, to be a paid leave. Specifically, **this bill:**

- 1) Requires that at least six weeks of a leave of absence—for pregnancy, miscarriage, childbirth and recovery therefrom—for an academic or classified female community college employee be with full pay.
- 2) Stipulates that the paid leave may begin before and/or continue after childbirth if the academic or classified employee is disabled by pregnancy, childbirth, or related condition.
- 3) Stipulates that paid leave taken per the above shall not diminish the academic or classified 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) For classified employees, requires rather than authorizes the governing board of the community college district to adopt regulations prescribing the manner of proof of pregnancy and the duration of time for which the leave of absence shall continue.
- 5) Stipulates that the rules and regulations adopted by the board shall not diminish a classified employee's existing right to take up to four months of leave for a disability related to pregnancy, childbirth or a related medical condition under the FEHA, or an extended leave as a reasonable accommodation of a disability under the Act.
- 6) Makes technical and conforming changes.

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) Provides that when an academic or classified community college employee is absent for up to five months due to illness or accident, the amount deducted from the salary due him or her during the absence shall not exceed the sum that is actually paid a substitute employee. (Education Code (EC) Sections. 87780 and 88196.)
- 4) Authorizes an academic or classified community college employee to use up to 12 weeks of his or her sick leave each school year for purposes of parental leave, including for the birth of a child, and when the employee has exhausted all available sick leave and continues to be absent due to parental leave, the amount deducted from the salary due him or her for any of the remaining portion of the 12 week period in which the absence occurs shall not exceed the sum that is actually paid a substitute employee. (EC Sects. 87780.1 and 88196.1.)
- 5) Authorizes the governing board of a community college district to provide a leave of absence for any academic employee required to be absent due to pregnancy, miscarriage childbirth, and recovery therefrom. Stipulates that the length and time frame of the absence are determined by the employee and the employee's physician. (EC Sect. 87766(a).)
- 6) Stipulates that the above shall be construed as requiring the board to grant leave with pay only when necessary so that leaves of absence for disabilities caused by pregnancy, miscarriage or childbirth be treated the same as leaves for illness, injury, or disability. (EC Sect. 87766(d).)
- 7) Authorizes the governing board of a community college district to provide a leave of absence, as it deems appropriate, for any female classified employee due to pregnancy or convalescence following childbirth, and to adopt rules and regulations prescribing the manner of proof of pregnancy, the time during pregnancy at which the leave shall be taken, and the length of time for which the leave of absence shall continue after the birth of the child. (EC Sect. 88193(a).)
- 8) Authorizes the board to provide in the above rules and regulations whether the leave shall be with or without pay, and if with pay, the amount, if any to be deducted from the classified employee's salary during the leave. (EC Sect. 88193(b).)

FISCAL EFFECT: Unknown but potential costs to community college districts not currently providing paid leave in conformance with this bill. As this bill addresses conditions of employment, and does not require a higher level of service to the general public, it does not create a new state mandated local program, thus no state reimbursement of any additional district costs would be required.

COMMENTS:

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.

Purpose. According to the author, unlike private-sector employees, many public employees are not covered by SDI and thus do not receive any type of paid leave under the PFL program. This means female employees are forced to exhaust their sick leave for pregnancy and childbirth, which depletes their accrued leave and limits their ability to fully recuperate prior to returning to work. Female community college employees are left with the decision to either “schedule” pregnancies based on the academic year calendar, or try to get by without pay. The author argues that the current practice discriminates against women as only they are required to deplete their leave balances in order to bear children.

AB 568 requires community college districts to provide academic and classified employees a paid leave when an employee is required to be absent for a time to be determined between the employee and their doctor, but for a minimum of six weeks for pregnancy, miscarriage, childbirth and recovery. The author asserts this bill will "help keep valued employees in the workforce after having children and will end the current discriminatory practice that forces only female employees to utilize their leave balances to bear children."

Prior Legislation. AB 2393 (Campos), Chapter 883, Statutes of 2016, allowed an academic or classified community college employee to use up to 12 weeks each school year for parental leave, including for the birth of a child, and provided that, after the sick leave has been exhausted, to receive differential pay, i.e the difference between that employee's pay and a substitute employee's pay, for the remainder of the 12-week period.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)
California Federation of Teachers (sponsor)
California Labor Federation
California School Employees Association
California Teamsters Public Affairs Council
EdVoice
Faculty Association of California Community Colleges
Legal Aid At Work
United Professors of Marin
65 individuals

Opposition

California Association of School Business Officials
Community College League of California (oppose unless amended)

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