

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Mike Fong, Chair
AB 2901 (Aguiar-Curry) – As Introduced February 15, 2024

SUBJECT: School and community college employees: paid disability and parental leave

SUMMARY: Requires K-12 public schools and community college districts (CCD) to provide up to 14 weeks of paid leave for employees experiencing pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from any of those conditions. Specifically, **this bill:**

CCDs

- 1) Requires the governing board of a CCD to provide for a leave of absence from duty for an academic or classified employee of the CCD who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions. Requires the length of the leave of absence, including the date on which the leave commences and the date on which the employee resumes duties, to be determined by the employee and the employee's physician. Requires the leave of absence be with full pay, subject to a maximum of 14 weeks. Prohibits a leave of absence from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws. Authorizes the paid leave may begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.
- 2) Requires that disabilities caused or contributed to by pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions, for all job-related purposes, be temporary disabilities, be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by a CCD.
- 3) Requires that written and unwritten employment policies and practices of a CCD be applied to disability due to pregnancy or childbirth be on the same terms and conditions applied to other temporary disabilities.
- 4) States that nothing in this measure shall be construed to diminish the obligation of a CCD to comply with any collective bargaining agreement entered into by a CCD and an exclusive bargaining representative that provides greater disability or parental leave rights to employees than the rights established under this measure.

K-12 public schools

- 5) Requires a public school employer to provide for a leave of absence from duty for a certificated or classified employee of the public school employer who is required to be absent from duty because the employee is experiencing or has experienced pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions. Requires that the length of the leave of absence, including the date on which the leave commences and the date on which the employee shall resume duties, be determined by the employee and the employee's physician. Requires the leave of absence to be with full pay, subject to a

maximum of 14 weeks. Prohibits a leave of absence taken from being deducted from any other leaves of absence available to the employee pursuant to state or federal regulations or laws. Authorizes the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or related medical conditions.

- 6) Requires disabilities caused or contributed to by pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from those conditions, for all job-related purposes, be temporary disabilities, and be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment by a public school employer.
- 7) Requires written and unwritten employment policies and practices of a public school employer be applied to disability due to pregnancy or childbirth be on the same terms and conditions applied to other temporary disabilities.
- 8) States that nothing in this measure shall be construed to diminish the obligation of a public school employer to comply with any collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative that provides greater disability or parental leave rights to employees than the rights established under this measure.

EXISTING LAW:

- 1) Under 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. (Government Code (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, caring 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 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 and recovery therefrom. Stipulates that the length and time frame of the absence are determined by the employee and the employee's physician. (Education Code (EDC) 87766)
- 4) 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. (EDC Section 88193).

- 5) 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 them during the absence shall not exceed the sum that is actually paid a substitute employee. (EDC Sections 87780 and 88196.)
- 6) Authorizes an academic or classified community college employee to use up to 12 weeks of their 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 them 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 and shall not be less than 50 percent of the academic or classified employees' regular salary. (EC Sections 87780.1 and 88196.1)

FISCAL EFFECT: Unknown

COMMENTS: *Double-referral.* AB 2901 (Aguiar-Curry) was previously heard in the Assembly Committee on Education on April 3, 2024, where it passed with unanimous support.

Purpose. According to the author, "Current law forces teachers to deplete all of their sick leave and then receive reduced "differential" pay where they effectively pay for their own substitute teacher. This practice makes it hard for pregnant teachers to care for their families and has long term financial consequences. 70% of teachers are women, and studies have shown that the women in the teaching ranks will receive nearly \$100,000 less than their male counterparts in their retirement because they are forced to use up all of their accrued sick leave. At a time when our educators are leaving this vital profession due to the pressures of the pandemic, and college students seek other paths for their careers, AB 2901 takes a necessary step to invest in our educators by giving them 14 weeks of paid pregnancy leave. AB 2901 will help to attract and retain educators. But, more importantly, it will grant the basic human right to care for one's child to the people we count on most to care for our children and grandchildren."

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 in below). 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 AB 2901 (Aguilar-Curry) on both academic and classified employees. (This is a broad summary that does not reflect all requirements and options, and local practice may vary significantly, since some of these benefits can be modified by collective bargaining agreements.)

	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; SDI (if paying in)		Can use sick leave and then differential pay; SDI (if paying in)
AB 2901	Full pay for 14 weeks	From 14 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.			

What do CCDs currently provide for pregnancy-related leave? The pregnancy-leave compensation provided to community college employees (beyond differential pay as required by law) likely varies considerably based on local bargaining agreements and participation in disability insurance programs. It is unclear how many community college or school districts participate in SDI, but some do as of 2021, including the Los Angeles Unified School District.

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, had agreed through collective bargaining to provide six weeks of paid maternity leave.

Parental leave in the United States and other countries. A 2019 study by the Institute for Women's Policy Research found that paid maternity leave keeps women in the workforce and lowers their need for public assistance. Most developed nations pay new mothers at least half of their salary during their time off, according to a December 2022 report by the Organization of Economic Cooperation and Development (OECD) that studied maternity leave in its 38 member countries, of policies in place as of April 2022. On average, maternity leave in the OECD countries lasts 18.5 weeks. Only one developed country — the United States — offers no national paid maternity leave, although some individual states and employers do offer it.

A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, 97% 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 changed and parents there currently receive 18 weeks of paid leave. Examples of countries with progressive paid maternity/paternity leave laws as of 2020 include Ireland with 6.5 months of paid leave, Italy with 5 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 Faculty Association of the California Community Colleges (FACCC) wrote in support of AB 2901, arguing that the bill "...provides critical support and job security for our valued faculty members at a critical time in their lives. By requiring up to 14 weeks of paid leave for pregnancy, childbirth, and related conditions, this bill ensures that our educators can prioritize their own health and the well-being of their families without fear of financial hardship or job loss."

"Furthermore, AB 2901 emphasizes the importance of classifying pregnancy and childbirth-related disabilities as temporary under any health or disability insurance policy. This provision is critical in ensuring that our faculty members receive the same level of support and accommodations as those with other temporary disabilities, thereby creating a more equitable and inclusive work environment."

"Finally, the bill protects faculty members' rights under existing collective bargaining agreements, ensuring that the new provisions do not reduce any additional disability or parental leave rights that have already been negotiated. This demonstrates a dedication to preserving the hard-won benefits negotiated by our union and its members."

Arguments in opposition. The Associations of California School Administrators (ACSA) wrote in opposition, noting that "Our opposition to the bill is based on two factors and is consistent with concerns expressed with prior legislation on this issue. The first factor is the fiscal impact that AB 2901 would have on local educational agencies (LEAs). The second fact is the complexity this would add to an already complicated, extensive set of employee-leave programs."

"AB 2901 would require LEAs to provide up to 14 weeks of full pay for pregnancy-related leaves of absence taken by certificated, academic and classified employees serving grades K-14. This leave may be taken before or after the pregnancy-related condition, and the employee is not required to use any sick leave prior to accessing this leave. There are no limitations on how frequently the leave may be taken, nor are there any required hours/weeks of employment to be completed before the employee qualifies for leave."

"Regrettably, the additional costs of this paid leave would be carried by the LEA and could easily reach the mid to high tens of millions of dollars annually between employee salary, benefits, and long-term substitute teaching positions needed for credentialed employees. It also would result in greater pension liability as sick leave accrual would count towards final benefit calculations. Given the nature of school finance, AB 2901 would draw from a finite pool of resources at the same time that the state is facing a significant budget deficit."

Prior legislation. AB 500 (Gonzalez) of the 2019-20 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 with the following message:

“Providing every California worker with paid family leave is a noble goal and a priority for my administration. However, this bill will likely result in annual costs of tens of millions of dollars that should be considered as part of the annual budget process and as part of local collective bargaining. Moreover, this proposal should be considered within the broader context of the Paid Family Leave Task Force, which is assessing increased paid family leave for all of California's workers.”

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 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 to receive differential pay.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Law Alliance
Breastfeedla
California Breastfeeding Coalition
California Child Care Resource and Referral Network
California Domestic Workers Coalition
California Employment Lawyers Association
California Federation of Teachers Afl-cio
California Labor Federation, Afl-cio
California Retired Teachers Association

California School Employees Association
California State Council of Service Employees International Union (seiu California)
California State Treasurer
California Teachers Association
California Wic Association
California Women's Law Center
California Work & Family Coalition
Caring Across Generations
Center for Community Action and Environmental Justice
Center for Workers' Rights
Child Care Law Center
Children Now
Citizens for Choice
Delta Kappa Gamma International - Chi State
Early Edge California
Electric Universe
Equal Rights Advocates
Faculty Association of California's Community Colleges
Friends Committee on Legislation of California
Health Access California
Human Impact Partners
Jewish Center for Justice
LA Alliance for A New Economy
LA Best Babies Network
Legal Aid At Work
National Council of Jewish Women Los Angeles
National Partnership for Women & Families
National Women's Political Caucus of California
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Poder Latinx
Public Counsel
Reproductive Freedom for All
Reproductive Freedom for All CA
San Diego County Breastfeeding Coalition
State Superintendent of Public Instruction Tony Thurmond
Worksafe

Opposition

Association of California School Administrators
California Association of School Business Officials (CASBO)

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