

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2785 (Rubio) – As Amended March 15, 2018

SUBJECT: Student services: lactation accommodations

SUMMARY: Requires the California Community Colleges (CCC) and the California State University (CSU) to provide reasonable accommodations to a lactating student on their respective campuses. Specifically, **this bill:**

- 1) Requires the CCC and the CSU to provide reasonable accommodations to a lactating student on their respective campuses to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding.
- 2) Requires that these reasonable accommodations include, but are not limited to, access to a private and secure room, other than a restroom, to express breast milk or breast-feed an infant child, permission to bring onto a school campus any equipment used to express breast milk, and access to a power source for that equipment.
- 3) Requires, upon the construction of a new campus of the CCC or the CSU, or the replacement, expansion, or renovation of an existing campus, that the respective educational institution to provide a sink, in addition to the accommodations described in (1) and (2) above, in any room or other location designated to comply with these provisions.
- 4) Requires that a lactating student on a college or university campus be given a reasonable amount of time to accommodate the need to express breast milk or breast-feed an infant child, and prohibits students from incurring an academic penalty as a result of their use of accommodations provided in this bill.
- 5) Authorizes that a complaint of noncompliance with the requirements of the bill to be filed with the Office of the Chancellor of the CCC and the CSU, as applicable, in accordance with procedures, and, if the complaint is found to have merit, would require the respective chancellor to provide a remedy to the affected student.

EXISTING LAW:

Federal law:

- 1) The Patient Protection and Affordable Care Act amended the Fair Labor Standards Act to require employers to provide a reasonable break time and a place which is not a bathroom to express breast milk. (United States Code, Title 42, 18001, Section 4207, et seq.)
- 2) Prohibits discrimination against any student, or exclusion of any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom. Federal law also requires pregnant students and those recovering from childbirth-related conditions to be provided with the same accommodations and support services

available to other students with temporary medical conditions. (Code of Federal Regulations, Title 34, Section 106.40)

State law:

- 1) Requires every employer, including the state and any political subdivision, to provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee is to be unpaid. (Labor Code Section 1030)
- 2) Requires employers to make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section. (Labor Code Section 1031)
- 3) Prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines "sex" to include breast-feeding or medical conditions related to breast-feeding. (Government Code Section 12926)
- 4) Require a school operated by a school district or a county office of education, the California School for the Deaf, the California School for the Blind, and a charter school to provide reasonable accommodations to a lactating pupil on a school campus to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding. (Education Code Section 222)
- 5) Defines "harassment and other discrimination on the basis of sex" to include specified practices such as the exclusion of any person from any program or activity or employment because of pregnancy or related conditions. (Education Code Section 230)
- 6) Requires, through regulation, local educational agencies to adopt uniform complaint procedures through which the public can register complaints regarding educational programs and rights. (California Code of Regulations, Title 5, Section 4600, et seq.)

FISCAL EFFECT: Unknown. By imposing additional duties on community college districts, this bill would impose a state-mandated local program.

COMMENTS: *Need for the bill.* According to the author, "A parent needs to be able to nurse or pump milk every 2-3 hours to establish and maintain a healthy milk flow for their child. For students who choose to nurse or pump milk for their children, [CCC] and [CSU] campuses fail to provide consistent and adequate lactation accommodations across all campuses. As a result, several students lack access to a clean, private, secure space on campus to nurse or pump. This can leave a student with equally unsatisfactory options -- to nurse or pump in spaces that potentially jeopardize their safety and comfort, to stop lactation before they would otherwise choose to, or to quit attending classes altogether."

The author further notes that, “California Labor Code requires that lactating school staff be provided with lactation accommodations and California Education Code requires that accommodations be provided students in K-12 public schools. However, this code does not extend to students in [CCC] or on CSU campuses.”

Existing rights for employees and students. Both state and federal law require employers to provide reasonable accommodations to lactating employees, including break time and the provision of private space (other than a restroom stall) in which to express breast milk or breast-feed. Existing law prohibits discriminatory practices in employment or housing accommodations on the basis of sex, and defines “sex” to include breast-feeding or medical conditions related to breast-feeding. Title IX prohibits discrimination on the basis of sex in all aspects of education, but does not explicitly reference breast-feeding.

This bill generally mirrors state and federal requirements that employees be provided reasonable accommodation to express breast milk or breast-feed. AB 302 (Garcia, 2015) required that accommodations be provided students in K-12 public schools, yet that same explicit provision does not exist currently for students in the CCC or CSU.

The CSU has indicated to committee staff that their campuses make lactation facilities available to students as well as faculty and staff. The CCC Chancellor’s Office has indicated that there is currently no system-wide policy explicitly authorizing students to use the same lactation facilities as faculty and staff.

Complaint process. The CSU and CCC both have explicit processes of complaint and appeal for cases of discrimination. AB 2785 explicitly authorizes students to file complaints of noncompliance, and requires the Chancellor’s Office of a respective system to provide an appropriate accommodation.

New construction and renovations. AB 2875 requires that campuses of the CSU and CCC install a sink into their lactation rooms or locations upon the construction of a new campus, or upon the replacement, expansion, or renovation of an existing campus. The CSU and CCC have raised concerns specifically with the broad nature of a “renovation,” given that even a small renovation project could trigger a mandated sink installation. While existing law does not require that a sink be included in lactation room accommodations for employees or for students in K-12 public schools, AB 1787 (Lowenthal) Chapter 634, Statutes of 2014, requires airports serving over one million enplanements yearly to install a sink in lactation locations upon construction of a new terminal or the replacement, expansion, or renovation of an existing terminal. AB 1787 also explicitly states that a “renovation of an existing terminal” means the repurposing of more than 25 percent of the space in the terminal.

Committee comments and amendments. As currently drafted, the sections outlining the process for a complaint of noncompliance could cause confusion, given that the Office of the CCC or CSU Chancellor is not usually the first body to receive or provide accommodation for a student. *The author has agreed* to technical amendments to have the complaint process language more closely reflect the complaint and appeals process used by the CSU and CCC. EC Sections 66271.9(f)(1-2) will be amended to read:

- f) (1) A complaint of noncompliance with the requirements of this section may be filed **with the Office of the Chancellor of the California Community Colleges** consistent with Subchapter 5 (commencing with Section 59300) of Chapter 10 of Division 6 of Title 5 of the

California Code of Regulations. If the compliant is found to have merit, the campus or appropriate body of appeal ~~Office of the Chancellor of the California Community Colleges~~ shall provide a remedy to the affected student.

(2) A complaint of noncompliance with the requirements of this section may be filed ~~with the Office of the Chancellor of the California State University~~ consistent with the procedures established pursuant to Executive Order No. 1097, dated October 5, 2016 or the appropriate successor document, issued by the Office of the Chancellor of the California State University. If the compliant is found to have merit, the campus or, upon appeal, the Office of the Chancellor of the California State University, shall provide a remedy to the affected student.

Additionally, as currently drafted, the University of California (UC) is not requested to implement the provisions of this bill. According to the Women's Policy Institute, an informal survey of UC's campuses found that existing campus policies meet or exceeded the standards of this legislation. Moving forward, *the author may wish to consider* requesting that UC implement the provisions of this legislation.

Committee *staff additionally recommends* that the author continue working with stakeholders to identify clear and specific instances where a renovation would trigger the installation of a sink.

Prior legislation. SB 937 (Weiner) requires a lactation room or location to include prescribed features and would require an employer to provide access to a sink and refrigerator in close proximity to the employee's work space. SB 937 also places specified requirements upon an employer. This legislation is scheduled for a hearing on April 11th in Senate Labor and Industrial Relations.

AB 302 (Garcia), Chapter 690, Statutes of 2015, requires that schools provide reasonable accommodations to breastfeeding students on school campuses.

AB 1787 (Lowenthal), as described above.

REGISTERED SUPPORT / OPPOSITION:

Support

ACT for Women and Girls
 American Academy of Pediatrics, California
 American Association of University Women of California
 American Civil Liberties Union of California Center for Advocacy and Policy
 American College of Obstetricians and Gynecologists
 California Breastfeeding Coalition
 California Community Colleges Early Childhood Educators
 California Latinas for Reproductive Justice
 Children Now
 County Health Executives Association of California
 Faculty Association of California Community Colleges
 First 5 Napa County
 Greenlining Institute
 Katy Tang, Member, San Francisco Board of Supervisors

Nursing Mothers Counsel, Inc.

Women's Foundation of California, Women's Policy Institute (Sponsor)

Two Individuals

Opposition

None on file.

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