

Date of Hearing: March 19, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 500 (Gonzalez) – As Introduced February 13, 2019

**SUBJECT:** School and community college employees: paid maternity leave

**[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.]**

**SUMMARY:** Requires that community colleges provide at least six weeks of full pay for pregnancy-related leave of absence taken by academic and classified employees. Specifically, **this bill:**

- 1) Requires that at least six weeks of a pregnancy and childbirth related leave of absence 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, even when other leaves are taken due to illness or injury resulting from pregnancy, miscarriage, childbirth, or recovery therefrom.
- 4) Enacts similar provisions related to certified and classified employees of school districts and charter schools.

**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 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) 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 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)

- 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. (EC Sect. 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 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.)
- 6) 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 and shall not be less than 50 percent of the academic or classified employees' regular salary. (EC Sects. 87780.1 and 88196.1)

**FISCAL EFFECT:** A Senate Appropriations analysis of a virtually identical bill in 2017 identified costs in the mid to high tens of millions of dollars each year for K-12 local education agencies (LEAs) and community college districts to provide the new employee benefit of six weeks of paid maternity leave. This estimate included all statutory benefits and the costs associated with hiring substitute teachers. The exact cost will depend on the number of employees utilizing this benefit as well as the salary structure of the employees. 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. There could, however, be cost pressure for the state to provide additional Proposition 98 funds to LEAs and community college districts for this purpose.

#### **COMMENTS:**

*Purpose.* According to the author, "AB 500 would encourage greater retention of K-14 employees by ensuring school districts, charter schools, and community college districts provide their employees with fully paid pregnancy leave for a minimum of six weeks. This benefit would also end the current discriminatory practice that forces female K-14 employees to deplete their existing paid leave balances when they are disabled by pregnancy, childbirth, or a related condition."

*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 academic and certificated community college employees 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 classified 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 community college 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 AB 500 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.)

	Disability leave (~ 6 weeks)	FMLA leave (12 weeks)
Current law	<ul style="list-style-type: none"> <li>• Use any sick leave, then receive differential pay, or</li> <li>• State disability (SDI) or other disability plan, <u>if</u> provided by the school district</li> </ul>	Use any sick leave, then receive differential pay
AB 500	Full pay	Use any sick leave, then receive differential pay

*What do districts 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, 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.

*Prior Legislation.*

- 1) AB 375 (Campos), Chapter 400, Statutes of 2015, required certificated school employees on maternity or paternity leave to receive differential pay for up to 12 weeks of family and medical leave after exhausting accrued sick leave.
- 2) AB 2393 (Campos), Chapter 883, Statutes of 2016, allowed an academic or classified community college employee or a classified school district employee to receive up to 12 weeks of differential pay after exhausting accrued sick leave.
- 3) This bill is virtually identical to AB 568 (Gonzalez) of 2017, which was vetoed by former Governor Brown, who noted his signing of AB 375 and AB 2393 and argued that further decisions regarding leave policies are best resolved through local collective bargaining.

**REGISTERED SUPPORT / OPPOSITION:****Support**

American Civil Liberties Union of California  
California Federation of Teachers  
California Professional Firefighters  
California School Employees Association  
Faculty Association of California Community Colleges

**Opposition**

Office of The Riverside County Superintendent of Schools  
Riverside County Public K-12 School District Superintendents

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