

the length of the leave of absence be determined by the employee and the employee's physician.

- 5) Specifies that during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of illness or accident for an additional period of five school months, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. Specifies the following:
 - a) The sick leave, including accumulated sick leave, and the five-month period run consecutively.
 - b) Limits the benefit to one five-month period per illness or accident. However, if a school year terminates before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.
- 6) Requires that certificated and classified employees that participate in the differential pay program receive no less than 50 percent of their regular salary during the period of such absence.

ANALYSIS

This bill requires school and community college districts to provide at least 50 percent of a certificated, academic, or classified employee's regular salary for the remaining portion of the 12-workweek period of parental leave, regardless of the differential pay system used by the employer.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "AB 2393 (Campos) provided up to 12 weeks of paid parental leave for all school employees. However, the bill overlooked part-time faculty members who work in differential pay districts. Those 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."
- 2) ***Pregnancy disability leave.*** Existing law provides that it is unlawful to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take leave not to exceed four months. The employee is entitled to use vacation leave during this time. Once the vacation time is exhausted, the employee can receive differential pay for the remaining time, for up to five months.

- 3) **Protected leave.** Existing law also prohibits, except under certain circumstances, the refusal to grant a request by any employee with a certain amount of service to take up to a total of 12 workweeks in a 12 month period for family care and medical leave. The employer is required to provide the employee a guarantee of employment in the same or comparable position upon the termination of the leave. The law specifies that this protected leave is separate and distinct from the pregnancy disability leave. Once an employee is cleared to return to work by a physician, the employee may take this protected leave.

The federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provide 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.

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.

- 4) **Differential pay.** Current law requires that certificated and classified employees of school districts be provided with differential pay during their FMLA leave, or be compensated with at least 50 percent of their salary, irrespective of the cost of a substitute. School districts may choose either system.

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.

For some employees employed by districts which do provide differential pay, the cost of providing a substitute to assume their duties is equal to their salary. As a result, they receive no differential pay. This bill would create a "floor" for differential pay equal to half of the employee's salary, irrespective of the cost of a substitute for that employee.

- 5) **Prior legislation.**

AB 568 (Gonzalez) of this 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, 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 employees to receive differential pay when on parental leave.

SUPPORT

California Federation of Teachers (sponsor)
American Civil Liberties Union
American Federation of State, County, and Municipal Employees
California Faculty Association
California School Employees Association
California Teachers Association
Communication Worker of America, District 9
Faculty Association of California Community Colleges

OPPOSITION

None received

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