
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: AB 500 **Hearing Date:** June 19, 2019
Author: Gonzalez
Version: February 13, 2019
Urgency: No **Fiscal:** No
Consultant: Ian Johnson

Subject: School and community college employees: paid maternity leave.

NOTE: This bill has been referred to the Committees on Education and Appropriations. A "do pass" motion should include referral to the Committee on Appropriations.

SUMMARY

This bill requires that school districts, charter schools, and community colleges provide at least six weeks of full pay for pregnancy-related leave of absence taken by certificated, academic, and classified employees.

BACKGROUND

Existing law:

- 1) Establishes the California Fair Employment and Housing Act (FEHA), under which 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. Also under the FEHA, reasonable accommodation of a disability related to pregnancy can include an extended leave of absence.
- 2) Establishes the California Family Rights Act (CFRA), providing certain employees up to 12 weeks of unpaid, job-protected leave per 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.
- 3) Requires school districts to provide for a leave of absence from duty for a certificated employee of the school district who is required to be absent from duties because of pregnancy, miscarriage, childbirth, and recovery therefrom. Requires that the length of the leave of absence be determined by the employee and the employee's physician.
- 4) Requires school districts to provide for a leave of absence from duty for a classified employee of the school district who is required to be absent from duties because of pregnancy, childbirth, and convalescence therefrom. Requires that

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:

- 1) Requires that at least six weeks of a pregnancy and childbirth related leave of absence be with full pay for certificated and classified employees of school districts and charter schools, and for academic or classified employees of community colleges.
- 2) States 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 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 (FEHA), even when other leaves are taken due to illness or injury resulting from pregnancy, miscarriage, childbirth, or recovery therefrom.
- 4) Requires charter schools to treat disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery from those conditions as, for all job-related purposes, temporary disabilities, and to treat them as such under any

health or temporary disability insurance or sick leave plan available in connection with employment.

- 5) Requires written and unwritten employment policies and practices of charter schools to be applied to disability due to pregnancy or childbirth on the same terms and conditions applied to other temporary disabilities.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “California is facing a significant teacher shortage, with 80 percent of districts reporting difficulty in filling positions in the 2017-2018 school year, according to research by the Learning Policy Institute. There simply haven’t been enough people interested in pursuing the profession and obtaining the proper credentials at the rate needed to fully serve California’s students. Even when teachers are hired, schools struggle to retain them, which negatively impacts students and imposes additional costs on the districts.

Existing law provides that schools must allow their female employees to take unpaid leave for pregnancy, childbirth or related medical conditions. After employees have exhausted vacation (if applicable) and sick leave, then they may receive differential pay—the remainder of their salary after the school’s costs of paying for a substitute—for a period of up to five months.

However, unpaid leave causes many women to struggle due to the loss of income and unable to take the necessary time off during their pregnancies or after childbirth for recovery. The hard-working employees who help our students thrive should not have to shoulder the burden of choosing between having children and paying the bills. Paid leave benefits have been shown to help increase worker retention and reduce turnover, particularly for women. Moreover, being able to take necessary time off before and after a pregnancy is crucial for the health of both the mother and the child, evidenced by positive outcomes such as healthier birth weights, decreased premature births, and decreased infant mortality rates.

By requiring school and community college districts to provide six weeks of fully paid pregnancy leave, this bill will help female employees working in K-14 settings to take necessary time off without sacrificing their financial security. Furthermore, this bill will finally end the discriminatory practice of giving female employees no choice but to deplete their sick leave and other paid time off in order to have children.

AB 500 has been introduced at a time when California schools are having enormous problems hiring and retaining teachers, in part because of low pay, skyrocketing housing costs, and other rising costs of living. This bill will also help ensure school districts can retain valued school and academic employees in the workforce after they’ve had children. This bill would not only eliminate a major inequity, but also create another incentive for young women to pursue a career in education.”

- 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. But there is no pay associated with the FMLA and the CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are only employment protected leaves.

- 4) **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. The maximum benefit is six times the weekly benefit amount, with no more than six weeks of PFL benefits paid within any 12-month period. Employees may only be eligible for the PFL program if they are covered by the SDI program through a negotiated agreement with the State of California. If an employee does not pay into the SDI program, he or she would not be eligible to receive disability compensation under PFL. In this scenario and assuming the employee is on leave for bonding time, the employee would need to use vacation time, sick leave, or personal necessity to receive compensation or elect to take leave without pay.
- 5) **Similar measure previously vetoed.** In 2017, a similar measure, AB 568 (Gonzalez-Fletcher, 2017) was vetoed by former Governor Brown, 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.

- 6) ***Arguments in support.*** The California Federation of Teachers writes: “Many school employees are not covered by the state disability insurance (SDI) and thus do not receive any type of paid leave under that program, unlike private employees. This means female employees are forced to exhaust their sick or vacation days for pregnancy and childbirth, which depletes their accrued leave and limits their ability to fully recuperate prior to returning to work. Female school employees are left with the decision to either “schedule” pregnancies based on the school calendar, or try to get by without pay. This current practice discriminates against women as only they are required to deplete their leave balances in order to bear children.”
- 7) ***Arguments in opposition.*** The Riverside County Superintendent of Schools writes: “Our opposition to the bill is based on two factors: 1) the fiscal impact that it would have on local education agencies; and 2) the complexity it would add to an already complicated set of employee-leave programs.

The additional leave benefit provided by AB 500 would create the potential of an employee being out of work and in a full or partial pay status from September through April – almost an entire academic year.

In its analysis of AB 568 (Gonzalez, 2017) a previous iteration of the bill, the Department of Finance estimated the fiscal impact as follows: ‘This bill is likely to result in significant cost pressures in the tens of millions to hundreds of millions of dollars in Proposition 98 General Fund for local education agencies to provide maternity leave for at least six weeks at full pay and to provide substitute employees for that period, if needed. If one percent of K-14 employees took six weeks of leave at full pay, the cost could range from \$43 million to \$163 million Proposition 98 General Fund annually.’”

SUPPORT

California Federation of Teachers (co-sponsor)
 Faculty Association of California Community Colleges (co-sponsor)
 SEIU State Council (co-sponsor)
 American Civil Liberties Union of California
 California Labor Federation
 California Professional Firefighters
 California School Employees Association
 California Teachers Association
 California Teamsters
 First 5 California
 University Professional and Technical Employees

OPPOSITION

Association of California Community College Administrators
Association of California School Administrators
California Association of School Business Officials
California School Boards Association
Kern County Office of Education
Orange County Office of Education
Riverside County Office of Education
Schools Excess Liability Fund

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