
SENATE COMMITTEE ON EDUCATION
Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 375
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Urgency: No
Consultant: Lenin Del Castillo

Hearing Date: June 24, 2015
Fiscal: No

Subject: School employees: sick leave: paternity and 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 certificated school employees on maternity or paternity leave to receive differential pay for up to 12 weeks of unpaid family and medical leave.

BACKGROUND

Existing law:

- 1) Specifies 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, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due to 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. The school district shall make every reasonable effort to secure the services of a substitute employee. Specifies the following:
 - a) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.
 - b) An employee shall not be provided more than 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. (Education Code § 44977)
- 2) Specifies that Section 44977 shall not apply to any school district which adopts and maintains in effect a rule which provides that when a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less whether or not the absence arises out of or in the course of the employment of the employee, he shall receive 50 percent or more of his regular salary during the period of such absence and nothing

in Section 44977 shall be construed as preventing the governing board of any district from adopting any such rule. When a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education. Nothing shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons requiring certification qualifications. This shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district. (Education Code § 44983)

ANALYSIS

This bill:

- 1) 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, accident, maternity leave or paternity leave for an additional period of five school months, whether or not the absence arises out of or in the course of the employment of the employee, 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.
- 2) Specifies an employee shall not be provided more than one five-month period per illness, accident, maternity leave or paternity leave. 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.
- 3) An employee on maternity or paternity leave pursuant to Section 12945.2 of the Government Code shall not be denied access to differential pay while on that leave.
- 4) To the extent that the changes made by this measure conflict with a provision of a collective bargaining agreement entered into by a public school employer and an exclusive bargaining representative before January 1, 2016, the changes made by this measure shall not apply until expiration or renewal of that collective bargaining agreement.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of

maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression.” The author’s office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave.

- 2) **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 CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are only employment protected leaves.
- 3) **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.
- 4) **Differential pay.** Existing law authorizes that during the time a certificated employee is on pregnancy disability leave after the birth of a child, the employee may use sick leave and after this is exhausted, can receive differential pay for the remaining time. Once the disability leave period of 6-8 weeks is over, then the employee may start the 12 week leave period under FMLA. During this time, the certificated employee may be able to use accrued sick leave, but once that time is exhausted, the certificated employee is unpaid for the remaining weeks.

This bill requires school employers to pay differential pay for certificated employees who take the 12 week FMLA maternity or paternity leave. Differential pay is calculated by subtracting the cost of a substitute employee from the certificated employee’s salary, e.g., if the certificated employee makes \$50,000 and the substitute cost is \$35,000, then the employee would be paid the difference of \$15,000 during maternity or paternity leave, after exhausting all accrued sick time.

- 5) ***Paid parental leave in other countries.*** A 2010 study by the International Labor Organization of the United Nations found that out of 167 countries studied, only four did not provide paid maternity leave for women—Lesotho, Papua New Guinea, Swaziland, and the United States. While these four countries did provide some form of maternity leave, there was no requirement that it be paid leave. As previously mentioned in the analysis, the federal Family Medical Leave Act provides for up to three months of unpaid maternity and/or paternity leave.
- 6) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill would result in unknown Proposition 98/General Fund state mandated reimbursable costs associated with the expansion of the existing Differential Pay and Reemployment mandate. This bill also results in increased employer costs to provide differential pay to employees not currently eligible for this benefit. Employer costs based on the differential pay program should not exceed what is normally paid to a school employee who would otherwise be working; however, this bill may place additional cost pressures on school district budgets to the extent they no longer experience cost savings as a result of not paying employees during a leave of absence due to maternity and paternity leave.
- 7) ***Related and prior legislation.***

AB 625 (Fong, Chapter 204, Statutes of 2014) allows a community college faculty member to count a leave of absence, including maternity and paternity leave, to his/her second, third, or fourth contract year, as is required in a local bargaining agreement.

AB 1606 (Chavez, Chapter 56, Statutes of 2014) allows community college academic and classified employees to use up to 30 days of leave, as specified, for the purpose of bonding with a new child.

AB 1562 (Gomez, 2014) would have amended existing law governing unpaid family and medical leave with respect to public or private school employees, as specified. This bill failed passage in the Senate Appropriations Committee.

SUPPORT

California Democrats for Education Reform
 California Federation of Teachers
 California Teachers Association
 Luther Burbank Education Association
 San Jose Teachers Association
 South Bay Labor Council
 United Teachers of Santa Clara
 Letters from individuals

OPPOSITION

None received.