
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 568 **Hearing Date:** June 21, 2017
Author: Gonzalez Fletcher
Version: May 17, 2017
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 for certificated and classified employees of school districts and charter schools, and 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.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "California is facing a significant teacher shortage, with most districts this year reporting difficulty in filling

positions, according to research by the Learning Policy Institute. Young individuals are simply not being attracted to the profession and obtaining the proper credentials at the rate needed to fully serve California's students. One reason for this is a lack of incentives for young individuals to consider entering the profession and staying in it. For instance, teachers face a difficult job for typically low pay and may struggle to find housing. Schools have also struggled to retain teachers, 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, and that after having exhausted vacation (if applicable) or sick leave, the employee 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 means female employees may be left struggling due to the loss of income, and not be able to afford to take the necessary time off during their pregnancies or after childbirth for recovery. Being able to take this time off is important for the health of the mother and the child, as it has been linked to healthier birth weights, decreased premature births and decreased infant mortality rates.

Paid leave benefits have been shown to help increase worker retention and reduce turnover, particularly for women. This bill will help keep valued school employees in the workforce after having children, and will end the current discriminatory practice that forces female employees to utilize their sick leave in order to bear children.”

- 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 Family Medical Leave Act (FMLA) and the California Family Rights Act (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) ***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.”
- 6) ***Arguments in opposition***. The California Association of School Business Officials (CASBO) writes: “CASBO agrees with the intent of the author to provide financial security and accommodation for specified time of leave to school employees. However, establishing a new benefit with a minimum of 6 weeks paid leave and no cap provided, makes it difficult for school districts to budget for a new benefit leave program, including the cost for a substitute teacher or classified staff. Without a direct state funding source, this adds to the school district’s financial burden as a new liability to be absorbed within an already constrained fiscal environment.”

SUPPORT

California Federation of Teachers (co-sponsor)
Service Employees International Union (co-sponsor)
American Civil Liberties Union of California
American Federation of State, County and Municipal Employees
California Employment Lawyers Association
California Labor Federation

California Professional Firefighters
California School Employees Association
California Teachers Association
California Teamsters Public Affairs Council
EdVoice
Faculty Association of California Community Colleges
Legal Aid at Work
Numerous individuals
Planned Parenthood Affiliates of California

OPPOSITION

Association of California Community College Administrators
California Association of Joint Powers Authorities
California Association of School Business Officials
Community College League of California
Orange County Department of Education
Riverside County Superintendent of Schools
School Employers Association of California
Schools Excess Liability Fund

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