

AMENDED IN SENATE SEPTEMBER 7, 2001

AMENDED IN SENATE MAY 29, 2001

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

ASSEMBLY BILL

No. 365

Introduced by Assembly Member Nation
(Coauthor: Senator O'Connell)

February 20, 2001

An act to amend Sections 45113, ~~45196, 88013, and 88196~~ and ~~88013~~ of the Education Code, relating to public school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 365, as amended, Nation. School employees: classified service.

~~(1) Existing~~

Existing law, which is applicable to school districts and community college districts that have not adopted the merit system, requires the governing board of each school district and community college district to prescribe written rules governing the personnel management of the classified service, whereby those employees are designated as permanent employees of the district after serving a prescribed probationary period not to exceed one year.

This bill would require a permanent employee who accepts a promotion and fails to complete the probationary period for the promotional position, to be employed in the classification from which he or she was promoted.

~~(2) Existing law precludes the amount deducted from the salary of a school district or community college district classified employee due~~



~~to absence on account of illness or accident for a period of 5 school months or less from exceeding the sum actually paid to a substitute employee employed to fill his or her position.~~

~~This bill would condition this provision on continued absence after the employee has exhausted all available sick leave. The bill would require that the 5-month period and the sick leave run consecutively and would limit an employee to one 5-month period per illness or accident. By requiring that school district or community college district to comply with these increased leave and differential pay provisions, this bill would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 45113 of the Education Code is
2 amended to read:
3 45113. The governing board of a school district shall
4 prescribe written rules and regulations, governing the personnel
5 management of the classified service, which shall be printed and
6 made available to employees in the classified service, the public,
7 and those concerned with the administration of this section,
8 whereby these employees are designated as permanent employees
9 of the district after serving a prescribed period of probation which
10 shall not exceed one year. A permanent employee who accepts a
11 promotion and fails to complete the probationary period for that
12 promotional position, shall be employed in the classification from
13 which he or she was promoted.



1 Any employee designated as a permanent employee shall be
2 subject to disciplinary action only for cause as prescribed by rule
3 or regulation of the governing board, but the governing board's
4 determination of the sufficiency of the cause for disciplinary
5 action shall be conclusive.

6 The governing board shall adopt rules of procedure for
7 disciplinary proceedings which shall contain a provision for
8 informing the employee by written notice of the specific charges
9 against him or her, a statement of the employee's right to a hearing
10 on those charges, and the time within which the hearing may be
11 requested which shall be not less than five days after service of the
12 notice to the employee, and a card or paper, the signing and filing
13 of which shall constitute a demand for hearing, and a denial of all
14 charges. The burden of proof shall remain with the governing
15 board, and any rule or regulation to the contrary shall be void.

16 No disciplinary action shall be taken for any cause which arose
17 prior to the employee's becoming permanent, nor for any cause
18 which arose more than two years preceding the date of the filing
19 of the notice of cause unless the cause was concealed or not
20 disclosed by the employee when it could be reasonably assumed
21 that the employee should have disclosed the facts to the employing
22 district.

23 This section shall apply only to districts not incorporating the
24 merit system as outlined in Article 6 (commencing with Section
25 45240) of this chapter.

26 ~~SEC. 2.—Section 45196 of the Education Code is amended to~~
27 ~~read:~~

28 ~~45196.—(a) When a person employed in the classified service~~
29 ~~has exhausted all available sick leave, including all accumulated~~
30 ~~sick leave, and continues to be absent from his or her duties on~~
31 ~~account of illness or accident for an additional period not to exceed~~
32 ~~five months, whether or not the absence arises out of or in the~~
33 ~~course of employment of the employee, the amount deducted from~~
34 ~~the salary due him or her for any month in which the absence~~
35 ~~occurs shall not exceed the sum which is actually paid a substitute~~
36 ~~employee employed to fill his or her position during his or her~~
37 ~~absence.~~

38 ~~(b) For purposes of subdivision (a), all of the following shall~~
39 ~~apply:~~



1 ~~(1) The sick leave, including accumulated sick leave, and the~~
2 ~~five-month period shall run consecutively.~~

3 ~~(2) An employee shall not be provided more than one~~
4 ~~five-month period per illness or accident. However, if a school~~
5 ~~year terminates before the five-month period is exhausted, the~~
6 ~~employee may take the balance of the five-month period in a~~
7 ~~subsequent school year.~~

8 ~~(c) Except in a district the governing board of which has~~
9 ~~adopted a salary schedule for substitute employees of the district,~~
10 ~~the amount paid the substitute employee during any month shall~~
11 ~~be less than the salary due the employee absent from his or her~~
12 ~~duties.~~

13 ~~(d) Entitlement to sick leave provisions under this section, if~~
14 ~~any, shall be considered “entitlement to other sick leave” for the~~
15 ~~purposes of computing benefits under the provisions of Section~~
16 ~~45192 if the absence is for industrial accident or illness and shall~~
17 ~~be used after entitlement to all regular sick leave, accumulated~~
18 ~~compensating time, vacation or other available paid leave has been~~
19 ~~exhausted.~~

20 ~~(e) This section shall not apply to any school district that adopts~~
21 ~~and maintains in effect a rule that provides that a regular classified~~
22 ~~employee shall once a year be credited with a total of not less than~~
23 ~~100 working days of paid sick leave, including days to which he~~
24 ~~or she is entitled under Section 45191. Those days of paid sick~~
25 ~~leave in addition to those required by Section 45191 shall be~~
26 ~~compensated at not less than 50 percent of the employee’s regular~~
27 ~~salary. The paid sick leave authorized under a rule of this type shall~~
28 ~~be exclusive of any other paid leave, holidays, vacation, or~~
29 ~~compensating time to which the employee may be entitled.~~
30 ~~Nothing in this section shall preclude the governing board from~~
31 ~~adopting a rule of this type.~~

32 ~~SEC. 3.—~~

33 *SEC. 2.* Section 88013 of the Education Code is amended to
34 read:

35 88013. The governing board of a community college district
36 shall prescribe written rules and regulations, governing the
37 personnel management of the classified service, which shall be
38 printed and made available to employees in the classified service,
39 the public, and those concerned with the administration of this
40 section, whereby these employees are, except as provided in



1 Section 72411, designated as permanent employees of the district
2 after serving a prescribed period of probation which shall not
3 exceed one year. A permanent employee who accepts a promotion
4 and fails to complete the probationary period for that promotional
5 classification, shall be employed in the position from which he or
6 she was promoted.

7 Any employee designated as a permanent employee shall be
8 subject to disciplinary action only for cause as prescribed by rule
9 or regulation of the governing board, but the governing board's
10 determination of the sufficiency of the cause for disciplinary
11 action shall be conclusive.

12 The governing board shall adopt rules of procedure for
13 disciplinary proceedings which shall contain a provision for
14 informing the employee by written notice of the specific charges
15 against him or her, a statement of the employee's right to a hearing
16 on those charges, and the time within which the hearing may be
17 requested which shall be not less than five days after service of the
18 notice to the employee, and a card or paper, the signing and filing
19 of which shall constitute a demand for hearing, and a denial of all
20 charges. The burden of proof shall remain with the governing
21 board, and any rule or regulation to the contrary shall be void.

22 No disciplinary action shall be taken for any cause that arose
23 prior to the employee's becoming permanent, or for any cause that
24 arose more than two years preceding the date of the filing of the
25 notice of cause, unless the cause was concealed or not disclosed by
26 the employee when it could be reasonably assumed that the
27 employee should have disclosed the facts to the employing district.

28 This section shall apply only to districts not incorporating the
29 merit system as outlined in Article 3 (commencing with Section
30 88060).

31 ~~SEC. 4. Section 88196 of the Education Code is amended to~~
32 ~~read:~~

33 ~~88196. (a) When a person employed in the classified service~~
34 ~~has exhausted all available sick leave including all accumulated~~
35 ~~sick leave, and continues to be absent from his or her duties on~~
36 ~~account of illness or accident for an additional period not to exceed~~
37 ~~five months, whether or not the absence arises out of or in the~~
38 ~~course of employment of the employee, the amount deducted from~~
39 ~~the salary due the employee for any month in which the absence~~
40 ~~occurs shall not exceed the sum which is actually paid a substitute~~



1 employee employed to fill the employee's position during his or
2 her absence.

3 (b) For purposes of subdivision (a), all of the following shall
4 apply:

5 (1) The sick leave, including accumulated sick leave, and the
6 five-month period shall run consecutively.

7 (2) An employee shall not be provided more than one
8 five-month period per illness or accident. However, if a school
9 year terminates before the five-month period is exhausted, the
10 employee may take the balance of the five-month period in a
11 subsequent school year.

12 (c) Except in a district where the governing board has adopted
13 a salary schedule for substitute employees of the district, the
14 amount paid the substitute employee during any month shall be
15 less than the salary due the employee absent from the employee's
16 duties.

17 (d) Entitlement to sick leave provisions under this section, if
18 any, shall be considered "entitlement to other sick leave" for the
19 purposes of computing benefits under Section 88192 if the absence
20 is for industrial accident or illness and shall be used after
21 entitlement to all regular sick leave, accumulated compensating
22 time, vacation or other available paid leave has been exhausted.

23 (e) This section shall not apply to any community college
24 district that adopts and maintains, in effect, a rule that provides that
25 a regular classified employee shall be credited once a year with a
26 total of not less than 100 working days of paid sick leave, including
27 days to which he or she is entitled under Section 88191. These days
28 of paid sick leave, in addition to those required by Section 88191,
29 shall be compensated at not less than 50 percent of the employee's
30 regular salary. The paid sick leave authorized under a rule of this
31 type shall be exclusive of any other paid leave, holidays, vacation,
32 or compensating time to which the employee may be entitled.
33 Nothing in this section shall preclude the governing board from
34 adopting a rule of this type.

35 SEC. 5. Notwithstanding Section 17610 of the Government
36 Code, if the Commission on State Mandates determines that this
37 act contains costs mandated by the state, reimbursement to local
38 agencies and school districts for those costs shall be made pursuant
39 to Part 7 (commencing with Section 17500) of Division 4 of Title
40 2 of the Government Code. If the statewide cost of the claim for



- 1 ~~reimbursement does not exceed one million dollars (\$1,000,000);~~
- 2 ~~reimbursement shall be made from the State Mandates Claims~~
- 3 ~~Fund.~~

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