

Assembly Bill No. 1918

Passed the Assembly August 19, 2004

Chief Clerk of the Assembly

Passed the Senate August 11, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Sections 44977, 44983, and 45196 of the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1918, Montanez. School employees.

Under existing law, when a certificated or classified school employee exhausts all available sick leave and continues to be absent from his or her duties on account of illness or accident for an additional period of 5 school months, the employee during those 5 months receives the difference between his or her salary and 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.

Existing law makes these provisions inapplicable to a school district that adopts and maintains in effect a rule whereby a person employed in a position requiring certification qualifications who is absent from his or her duties on account of illness or accident for a period of 5 school months or less receives 50% or more of his or her regular salary during the period of the absence.

Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

This bill would allow a school employee, in a school district that is not subject to the disability compensation laws, to use up to 6 weeks of the 5-month period during which the employee receives differential pay to take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.

The bill would similarly allow a school employee in a school district that is not subject to the disability compensation laws and in which a school employee receives 50% or more of his or her regular salary during an absence for illness or accident of 5 months or less to use up to 6 weeks of that 5 month or less period to take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child.



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

SECTION 1. Section 44977 of the Education Code is amended to read:

44977. (a) (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 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 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.

(2) Of the five-month period allowed pursuant to paragraph (1), up to six weeks may be used to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. For purposes of this paragraph, a person is seriously ill if the person suffers an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code. For purposes of this paragraph, the following terms have the following meanings:

(A) “Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

(B) “Domestic partner” has the same meaning as defined in Section 297 of the Family Code.

(C) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(D) “Spouse” means a partner to a lawful marriage.



(3) Paragraph (2) applies to a public school employer, as defined in Section 3540.1 of the Government Code, that is not subject to Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(b) For purposes of subdivision (a):

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

(2) 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.

(c) The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

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

(e) When a person employed in a position requiring certification qualifications is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her 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. The rules and regulations shall not conflict with rules and regulations of the State Board of Education.

(f) This section does not 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 acquiring certification qualifications.

(g) This section is 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.

SEC. 2. Section 44983 of the Education Code is amended to read:



44983. (a) (1) Section 44977 does not prohibit a school district from adopting a rule that permits a person employed in a position requiring certification qualifications who is absent from his or her 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, from receiving 50 percent or more of his or her regular salary during the period of the absence .

(2) Not more than six weeks of the five-month period allowed pursuant to paragraph (1), may be used to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. For purposes of this paragraph, a person is seriously ill if the person suffers an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code. For purposes of this paragraph, the following terms have the following meanings:

(A) “Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a minor to whom the employee stands in loco parentis.

(B) “Domestic partner” has the same meaning as defined in Section 297 of the Family Code.

(C) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a minor.

(D) “Spouse” means a partner to a lawful marriage.

(3) Paragraph (2) applies to a public school employer, as defined in Section 3540.1 of the Government Code, that is not subject to Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(b) Notwithstanding subdivision (a) if a person employed in a position requiring certification qualifications is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her 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. The rules and regulations shall not conflict with rules and regulations of the State Board of Education.

(c) This section does not 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.

(d) This section 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.

SEC. 3. Section 45196 of the Education Code is amended to read:

45196. (a) (1) When a person employed in the classified service is absent from his or her duties on account of illness or accident for a period of five months or less, whether or not the absence arises out of or in the course of employment of the employee, the amount deducted from the salary due him or her for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill his or her position during his or her absence.

(2) Of the five-month period allowed pursuant to paragraph (1), up to six weeks may be used to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption. For purposes of this paragraph, a person is seriously ill if the person suffers an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or continuing supervision by a health care provider, as defined in Section 12945.2 of the Government Code. For purposes of this paragraph, the following terms have the following meanings:

(A) “Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

(B) “Domestic partner” has the same meaning as defined in Section 297 of the Family Code.



(C) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(D) “Spouse” means a partner to a lawful marriage.

(3) Paragraph (2) applies to a public school employer, as defined in Section 3540.1 of the Government Code, that is not subject to Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

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

(c) Entitlement to sick leave under this section, if any, shall be considered “entitlement to other sick leave” for the purposes of computing benefits under the provisions of Section 45192 if the absence is for industrial accident or illness and shall be used after entitlement to all regular sick leave, accumulated compensating time, vacation or other available paid leave is exhausted.

(d) This section does not apply to any school district that adopts and maintains in effect a rule pursuant to which a regular classified employee is once a year credited with a total of not less than 100 working days of paid sick leave, including days to which he or she is entitled under Section 45191. Those days of paid sick leave in addition to those required by Section 45191 shall be compensated at not less than 50 percent of the employee’s regular salary. The paid sick leave authorized under that rule shall be exclusive of any other paid leave, holidays, vacation, or compensating time to which the employee may be entitled. This section does not preclude the governing board from adopting a rule as described in this subdivision.



Approved _____, 2004

Governor

