

AMENDED IN ASSEMBLY APRIL 21, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2393

Introduced by Assembly Member Campos

February 18, 2016

An act to amend Section 44977.5 of, and to add Sections ~~45196.1~~ 45196.1, 87780.1, and 88196.1 to, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2393, as amended, Campos. School-classified employees: sick leave: parental leave.

Under existing law, when a person employed in a position requiring certification qualifications exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, he or she, during that additional period, 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 also provides the differential pay benefit described above for up to 12 school weeks if the person employed in a position requiring certification qualifications is absent on account of maternity or paternity leave. Existing law provides that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave. Existing law prohibits a person employed in a position requiring certification qualifications on maternity

or paternity leave pursuant to the Moore-Brown-Roberti Family Rights Act from being denied access to differential pay while on that leave.

This bill would additionally provide that if a school district maintains a rule that credits a person employed in a position requiring certification qualifications at least 100 working days of sick leave paid at no less than 50% of his or her regular salary, when he or she has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of parental leave, the person employed in a position requiring certification qualifications would be compensated at no less than 50% of his or her regular salary for a period of up to 12 weeks for parental leave.

Under existing law, when a classified school employee in certain school districts and community college districts exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, the employee during that additional period 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. Under existing law, when a classified school employee in certain other school districts and community college districts exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, the employee during that additional period receives at least 50% of the employee's regular salary.

This bill would additionally provide the differential pay benefits described above for up to 12 workweeks if the classified school employee is absent on account of parental leave, as defined. The bill would provide that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, *taken* during a period of parental leave. The bill would provide that, to the extent these provisions conflict with any provision of a collective bargaining agreement entered into before January 1, 2017, by a public school employer and an exclusive bargaining representative, these provisions shall not apply until the expiration or renewal of that collective bargaining agreement.

Under existing law, when a person employed in an academic position in a community college district exhausts all available sick leave, as specified, and continues to be absent from his or her duties on account of illness or accident for an additional period of up to 5 school months, the person employed in an academic position during that additional

period receives the difference between his or her salary and the sum that is actually paid a temporary employee employed to fill his or her position during his or her absence or, if no temporary employee was employed, the amount that would have been paid to the temporary employee had he or she been employed.

This bill would additionally provide the differential pay benefit described above for up to 12 workweeks if the person employed in an academic position is absent on account of parental leave, as defined, as specified. The bill would provide that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of parental leave. The bill would additionally provide that if a community college district maintains a rule that credits a person employed in an academic position at least 100 working days of sick leave paid at no less than 50% of the employee’s regular salary, when an employee has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of parental leave, the employee would be compensated at no less than 50% of the employee’s regular salary for a period of up to 12 weeks for parental leave.

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

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

1 SECTION 1. Section 44977.5 of the Education Code is amended
2 to read:
3 44977.5. (a) During each school year, when a person employed
4 in a position requiring certification qualifications has exhausted
5 all available sick leave, including all accumulated sick leave, and
6 continues to be absent from his or her duties on account of
7 maternity or paternity leave pursuant to Section 12945.2 of the
8 Government Code for a period of up to 12 school weeks, whether
9 or not the absence arises out of or in the course of the employment
10 of the employee, the amount deducted from the salary due him or
11 her for any of the additional 12 weeks in which the absence occurs
12 shall not exceed the sum that is actually paid a substitute employee
13 employed to fill his or her position during his or her absence or,
14 if no substitute employee was employed, the amount that would
15 have been paid to the substitute had he or she been employed. The

1 ~~school district shall make every reasonable effort to secure the~~
 2 ~~services of a substitute employee.~~

3 44977.5. (a) (1) *Notwithstanding any other law, during each*
 4 *school year, a person employed in a position requiring certification*
 5 *qualifications may use his or her sick leave for purposes of parental*
 6 *leave for a period of up to 12 workweeks.*

7 (2) *When the person employed in a position requiring*
 8 *certification qualifications has exhausted all available sick leave,*
 9 *including all accumulated sick leave, and continues to be absent*
 10 *from his or her duties on account of parental leave, the amount*
 11 *deducted from the salary due him or her for any of the additional*
 12 *12 workweeks in which the absence occurs shall not exceed the*
 13 *sum that is actually paid a substitute employee employed to fill his*
 14 *or her position during his or her absence or, if no substitute*
 15 *employee was employed, the amount that would have been paid*
 16 *to a substitute had he or she been employed. The school district*
 17 *shall make every reasonable effort to secure the services of a*
 18 *substitute employee.*

19 (3) *Notwithstanding paragraph (2), if a school district maintains*
 20 *a rule that credits a person employed in a position requiring*
 21 *certification qualifications with no less than 100 working days of*
 22 *sick leave paid at no less than 50 percent of his or her regular*
 23 *salary, when he or she has exhausted all available sick leave,*
 24 *including all accumulated sick leave, and continues to be absent*
 25 *from his or her duties on account of parental leave, a person*
 26 *employed in a position requiring certification qualifications shall*
 27 *be compensated at no less than 50 percent of his or her regular*
 28 *salary for a period of up to 12 weeks for parental leave.*

29 (b) ~~For purposes of subdivision (a):~~ (a), *both of the following*
 30 *apply:*

31 (1) ~~The 12-week period shall be reduced by any period of sick~~
 32 ~~leave, including accumulated sick leave, taken during a period of~~
 33 ~~maternity or paternity leave pursuant Section 12945.2 of the~~
 34 ~~Government Code. parental leave.~~

35 (2) ~~An employee~~ *A person employed in a position requiring*
 36 *certification qualifications shall not be provided more than one*
 37 *12-week period per maternity or paternity leave. However, if a*
 38 *school year terminates before the 12-week period is exhausted,*
 39 *the employee may take the balance of the 12-week period in the*

1 ~~subsequent school year: for paid parental leave during any~~
2 ~~12-month period.~~

3 ~~(3) An employee on maternity or paternity leave pursuant to~~
4 ~~Section 12945.2 of the Government Code shall not be denied access~~
5 ~~to differential pay while on that leave.~~

6 (c) This section shall be applicable whether or not the absence
7 from duty is by reason of a leave of absence granted by the
8 governing board of the employing school district.

9 ~~(d) To the extent that this section conflicts with a provision of~~
10 ~~a collective bargaining agreement~~

11 (d) *Nothing in this section shall be construed as requiring a*
12 *person employed in a position requiring certification qualifications*
13 *to use his or her sick leave for the purposes of parental leave as*
14 *a condition of retaining his or her rights to unpaid parental leave*
15 *pursuant to Section 12945.2 of the Government Code or any other*
16 *law.*

17 (e) *Nothing in this section shall be construed to diminish the*
18 *obligation of a public school employer to comply with any*
19 *collective bargaining agreement entered into by a public school*
20 *employer and an exclusive bargaining representative before January*
21 *1, 2016, pursuant to Chapter 10.7 (commencing with Section 3540)*
22 *of Division 4 of Title 1 of the Government Code, this section shall*
23 *not apply until expiration or renewal of that collective bargaining*
24 *agreement. Code that provides greater parental leave rights to*
25 *employees than the rights established under this section.*

26 (e)

27 (f) For purposes of this section, ~~“maternity or paternity leave”~~
28 *“parental leave”* means leave for reason of the birth of a child of
29 the employee, or the placement of a child with an employee in
30 connection with the adoption or foster care of the child by the
31 employee.

32 **SECTION 1.**

33 *SEC. 2.* Section 45196.1 is added to the Education Code, to
34 read:

35 45196.1. (a) (1) Notwithstanding any other law, during each
36 school year, a classified employee may use his or her sick leave
37 for purposes of parental leave for a period of up to 12 workweeks.

38 (2) When the employee has exhausted all available sick leave,
39 including all accumulated sick leave, and continues to be absent
40 from his or her duties on account of parental leave, the amount

1 deducted from the salary due him or her for any of the additional
2 12 workweeks in which the absence occurs shall not exceed the
3 sum that is actually paid a substitute employee employed to fill
4 his or her position during his or her absence.

5 (3) Notwithstanding paragraph (2), if a school district maintains
6 a rule that credits classified employees with no less than 100
7 working days of sick leave paid at no less than 50 percent of the
8 employee’s regular salary, when an employee has exhausted all
9 available sick leave, including all accumulated sick leave, and
10 continues to be absent from his or her duties on account of parental
11 leave, the employee shall be compensated at no less than 50 percent
12 of the employee’s regular salary for a period of up to 12 weeks for
13 parental leave.

14 (b) For purposes of subdivision (a), both of the following apply:

15 (1) The 12-week period of parental leave shall be reduced by
16 any period of sick leave, including accumulated sick leave, taken
17 during a period of parental leave.

18 (2) An employee shall not be provided more than one 12-week
19 period for paid parental leave during any 12-month period.

20 (c) This section shall be applicable whether or not the absence
21 from duty is by reason of a leave of absence granted by the
22 governing board of the employing school district.

23 (d) Nothing in this section shall be construed as requiring a
24 classified employee to use his or her sick leave for the purposes
25 of parental leave as a condition of retaining his or her rights to
26 unpaid parental leave pursuant to Section 12945.2 of the
27 Government Code or any other law.

28 (e) ~~To the extent that this section conflicts with a provision of~~
29 ~~a collective bargaining agreement~~ *Nothing in this section shall be*
30 *construed to diminish the obligation of a public school employer*
31 *to comply with any collective bargaining agreement* entered into
32 by a public school employer and an exclusive bargaining
33 representative ~~before January 1, 2017, pursuant to Chapter 10.7~~
34 ~~(commencing with Section 3540) of Division 4 of Title 1 of the~~
35 ~~Government Code;~~ *Code that provides greater parental leave*
36 *rights to employees than the rights established under this section*
37 ~~shall not apply until expiration or renewal of that collective~~
38 ~~bargaining agreement.~~ *section.*

39 (f) For purposes of this section, “parental leave” means leave
40 for reason of the birth of a child of the employee, or the placement

1 of a child with an employee in connection with the adoption or
2 foster care of the child by the employee.

3 *SEC. 3. Section 87780.1 is added to the Education Code, to*
4 *read:*

5 *87780.1. (a) (1) Notwithstanding any other law, during each*
6 *school year, a person employed in an academic position may use*
7 *his or her sick leave for purposes of parental leave for a period*
8 *of up to 12 workweeks.*

9 *(2) When the employee has exhausted all available sick leave,*
10 *including all accumulated sick leave, and continues to be absent*
11 *from his or her duties on account of parental leave, the amount*
12 *deducted from the salary due him or her for any of the additional*
13 *12 workweeks in which the absence occurs shall not exceed the*
14 *sum that is actually paid a temporary employee employed to fill*
15 *his or her position during his or her absence or, if no temporary*
16 *employee was employed, the amount that would have been paid*
17 *to the temporary employee had he or she been employed.*

18 *(3) Notwithstanding paragraph (2), if a community college*
19 *district maintains a rule that credits a person employed in an*
20 *academic position with no less than 100 working days of sick leave*
21 *paid at no less than 50 percent of the employee's regular salary,*
22 *when an employee has exhausted all available sick leave, including*
23 *all accumulated sick leave, and continues to be absent from his or*
24 *her duties on account of parental leave, the employee shall be*
25 *compensated at no less than 50 percent of the employee's regular*
26 *salary for a period of up to 12 weeks for parental leave.*

27 *(b) For purposes of subdivision (a), both of the following apply:*

28 *(1) The 12-week period shall be reduced by any period of sick*
29 *leave, including accumulated sick leave, taken during a period of*
30 *parental leave.*

31 *(2) An employee shall not be provided more than one 12-week*
32 *period for paid parental leave during any 12-month period.*

33 *(c) This section shall be applicable whether or not the absence*
34 *from duty is by reason of a leave of absence granted by the*
35 *governing board of the employing community college district.*

36 *(d) Nothing in this section shall be construed as requiring a*
37 *person employed in an academic position to use his or her sick*
38 *leave for the purposes of parental leave as a condition of retaining*
39 *his or her rights to unpaid parental leave pursuant to Section*
40 *12945.2 of the Government Code or any other law.*

1 (e) Nothing in this section shall be construed to diminish the
 2 obligation of a public school employer to comply with any
 3 collective bargaining agreement entered into by a public school
 4 employer and an exclusive bargaining representative pursuant to
 5 Chapter 10.7 (commencing with Section 3540) of Division 4 of
 6 Title 1 of the Government Code that provides greater parental
 7 leave rights to employees than the rights established under this
 8 section.

9 (f) For purposes of this section, “parental leave” means leave
 10 for reason of the birth of a child of the employee, or the placement
 11 of a child with an employee in connection with the adoption or
 12 foster care of the child by the employee.

13 ~~SEC. 2.~~

14 SEC. 4. Section 88196.1 is added to the Education Code, to
 15 read:

16 88196.1. (a) (1) Notwithstanding any other law, during each
 17 school year, a classified employee may use his or her sick leave
 18 for purposes of parental leave for a period of up to 12 workweeks.

19 (2) When the employee has exhausted all available sick leave,
 20 including all accumulated sick leave, and continues to be absent
 21 from his or her duties on account of parental leave, the amount
 22 deducted from the salary due him or her for any of the additional
 23 12 workweeks in which the absence occurs shall not exceed the
 24 sum that is actually paid a substitute employee employed to fill
 25 his or her position during his or her absence.

26 (3) Notwithstanding paragraph (2), if a community college
 27 district maintains a rule that credits classified employees with no
 28 less than 100 working days of sick leave paid at no less than 50
 29 percent of the employee’s regular salary, when an employee has
 30 exhausted all available sick leave, including all accumulated sick
 31 leave, and continues to be absent from his or her duties on account
 32 of parental leave, the employee shall be compensated at no less
 33 than 50 percent of the employee’s regular salary for a period of
 34 up to 12 weeks for parental leave.

35 (b) For purposes of subdivision (a), both of the following apply:

36 (1) The 12-week period of parental leave shall be reduced by
 37 any period of sick leave, including accumulated sick leave, taken
 38 during a period of parental leave.

39 (2) An employee shall not be provided more than one 12-week
 40 period for paid parental leave during any 12-month period.

1 (c) This section shall be applicable whether or not the absence
2 from duty is by reason of a leave of absence granted by the
3 governing board of the employing community college district.

4 (d) Nothing in this section shall be construed as requiring a
5 classified employee to use his or her sick leave for the purposes
6 of parental leave as a condition of retaining his or her rights to
7 unpaid parental leave pursuant to Section 12945.2 of the
8 Government Code or any other law.

9 ~~To the extent that this section conflicts with a provision of~~
10 ~~a collective bargaining agreement~~ *Nothing in this section shall be*
11 *construed to diminish the obligation of a public school employer*
12 *to comply with any collective bargaining agreement* entered into
13 by a public school employer and an exclusive bargaining
14 representative before January 1, 2017, pursuant to Chapter 10.7
15 (commencing with Section 3540) of Division 4 of Title 1 of the
16 Government Code, *Code that provides greater parental leave*
17 *rights to employees than the rights established under this section*
18 ~~shall not apply until expiration or renewal of that collective~~
19 ~~bargaining agreement.~~ *section.*

20 (f) For purposes of this section, “parental leave” means leave
21 for reason of the birth of a child of the employee, or the placement
22 of a child with an employee in connection with the adoption or
23 foster care of the child by the employee.