

AMENDED IN SENATE JUNE 9, 2016  
AMENDED IN ASSEMBLY APRIL 21, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2393**

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**Introduced by Assembly Member Campos**

February 18, 2016

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An act to amend Section 44977.5 of, and to add Sections 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 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. *The bill would require, if a person employed in a position requiring certification qualifications elects to receive the differential pay benefit under these provisions, his or her right to unpaid parental leave pursuant to the Moore-Brown-Roberti Family Rights Act, if any, to be reduced by the amount of time the employee receives the differential pay benefit.*

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.~~ *The bill would require, if a classified employee elects to receive the differential pay benefit under these provisions, his or her right to unpaid parental leave pursuant to the Moore-Brown-Roberti Family Rights Act, if any, to be reduced by the amount of time the employee receives the differential pay benefit.*

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. *The bill would require, if a person employed in an academic position elects to receive the differential pay benefit under these provisions, his or her right to unpaid parental leave pursuant to the Moore-Brown-Roberti Family Rights Act, if any, to be reduced by the amount of time the employee receives the differential pay benefit.*

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  
2 amended to read:

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  
14 his 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), both of the following apply:

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

33 (2) A person employed in a position requiring certification  
34 qualifications shall not be provided more than one 12-week period  
35 for paid parental leave during any 12-month period.

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

1 (d) (1) Nothing in this section shall be construed as requiring  
2 a person employed in a position requiring certification  
3 qualifications to use his or her sick leave for the purposes of  
4 parental leave as a condition of retaining his or her rights to unpaid  
5 parental leave pursuant to Section 12945.2 of the Government  
6 Code or any other law.

7 (2) *If a person employed in a position requiring certification*  
8 *qualifications elects to receive the differential pay benefit under*  
9 *this section, his or her right to unpaid parental leave pursuant to*  
10 *Section 12945.2 of the Government Code, if any, shall be reduced*  
11 *by the amount of time the employee receives the differential pay*  
12 *benefit.*

13 (e) Nothing in this section shall be construed to diminish the  
14 obligation of a public school employer to comply with any  
15 collective bargaining agreement entered into by a public school  
16 employer and an exclusive bargaining representative pursuant to  
17 Chapter 10.7 (commencing with Section 3540) of Division 4 of  
18 Title 1 of the Government Code that provides greater parental  
19 leave rights to employees than the rights established under this  
20 section.

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

25 SEC. 2. Section 45196.1 is added to the Education Code, to  
26 read:

27 45196.1. (a) (1) Notwithstanding any other law, during each  
28 school year, a classified employee may use his or her sick leave  
29 for purposes of parental leave for a period of up to 12 workweeks.

30 (2) When the employee has exhausted all available sick leave,  
31 including all accumulated sick leave, and continues to be absent  
32 from his or her duties on account of parental leave, the amount  
33 deducted from the salary due him or her for any of the additional  
34 12 workweeks in which the absence occurs shall not exceed the  
35 sum that is actually paid a substitute employee employed to fill  
36 his or her position during his or her absence.

37 (3) Notwithstanding paragraph (2), if a school district maintains  
38 a rule that credits classified employees with no less than 100  
39 working days of sick leave paid at no less than 50 percent of the  
40 employee’s regular salary, when an employee has exhausted all

1 available sick leave, including all accumulated sick leave, and  
2 continues to be absent from his or her duties on account of parental  
3 leave, the employee shall be compensated at no less than 50 percent  
4 of the employee's regular salary for a period of up to 12 weeks for  
5 parental leave.

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

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

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

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

15 (d) (1) Nothing in this section shall be construed as requiring  
16 a classified employee to use his or her sick leave for the purposes  
17 of parental leave as a condition of retaining his or her rights to  
18 unpaid parental leave pursuant to Section 12945.2 of the  
19 Government Code or any other law.

20 (2) *If a classified employee elects to receive the differential pay*  
21 *benefit under this section, his or her right to unpaid parental leave*  
22 *pursuant to Section 12945.2 of the Government Code, if any, shall*  
23 *be reduced by the amount of time the employee receives the*  
24 *differential pay benefit.*

25 (e) Nothing in this section shall be construed to diminish the  
26 obligation of a public school employer to comply with any  
27 collective bargaining agreement entered into by a public school  
28 employer and an exclusive bargaining representative pursuant to  
29 Chapter 10.7 (commencing with Section 3540) of Division 4 of  
30 Title 1 of the Government Code that provides greater parental  
31 leave rights to employees than the rights established under this  
32 section.

33 (f) For purposes of this section, "parental leave" means leave  
34 for reason of the birth of a child of the employee, or the placement  
35 of a child with an employee in connection with the adoption or  
36 foster care of the child by the employee.

37 SEC. 3. Section 87780.1 is added to the Education Code, to  
38 read:

39 87780.1. (a) (1) Notwithstanding any other law, during each  
40 school year, a person employed in an academic position may use

1 his or her sick leave for purposes of parental leave for a period of  
2 up to 12 workweeks.

3 (2) When the employee has exhausted all available sick leave,  
4 including all accumulated sick leave, and continues to be absent  
5 from his or her duties on account of parental leave, the amount  
6 deducted from the salary due him or her for any of the additional  
7 12 workweeks in which the absence occurs shall not exceed the  
8 sum that is actually paid a temporary employee employed to fill  
9 his or her position during his or her absence or, if no temporary  
10 employee was employed, the amount that would have been paid  
11 to the temporary employee had he or she been employed.

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

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

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

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

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

30 (d) (1) Nothing in this section shall be construed as requiring  
31 a person employed in an academic position to use his or her sick  
32 leave for the purposes of parental leave as a condition of retaining  
33 his or her rights to unpaid parental leave pursuant to Section  
34 12945.2 of the Government Code or any other law.

35 (2) *If a person employed in an academic position elects to*  
36 *receive the differential pay benefit under this section, his or her*  
37 *right to unpaid parental leave pursuant to Section 12945.2 of the*  
38 *Government Code, if any, shall be reduced by the amount of time*  
39 *the employee receives the differential pay benefit.*

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

15 88196.1. (a) (1) Notwithstanding any other law, during each  
16 school year, a classified employee may use his or her sick leave  
17 for purposes of parental leave for a period of up to 12 workweeks.

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

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

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

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

38 (2) An employee shall not be provided more than one 12-week  
39 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) (1) Nothing in this section shall be construed as requiring  
5 a 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 (2) *If a classified employee elects to receive the differential pay*  
10 *benefit under this section, his or her right to unpaid parental leave*  
11 *pursuant to Section 12945.2 of the Government Code, if any, shall*  
12 *be reduced by the amount of time the employee receives the*  
13 *differential pay benefit.*

14 (e) Nothing in this section shall be construed to diminish the  
15 obligation of a public school employer to comply with any  
16 collective bargaining agreement entered into by a public school  
17 employer and an exclusive bargaining representative pursuant to  
18 Chapter 10.7 (commencing with Section 3540) of Division 4 of  
19 Title 1 of the Government Code that provides greater parental  
20 leave rights to employees than the rights established under this  
21 section.

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