

AMENDED IN SENATE JUNE 9, 2016
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, 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.