

AMENDED IN SENATE AUGUST 17, 2016

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 the remaining portion of the 12-workweek period of 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. *no longer require a person employed in a position requiring certification qualifications to have 1,250 hours of service with the employer during the previous 12-month period, as required by the Moore-Brown-Roberti Family Rights Act, in order to take parental leave pursuant to these provisions. The bill would require that parental leave taken pursuant to these provisions run concurrently with parental leave taken pursuant to the act, and that the aggregate amount of parental leave taken pursuant to either these provisions or under the act not exceed 12 workweeks in a 12-month period.*

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~~ 12-workweek period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of parental leave. 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. no longer require a classified employee to have 1,250 hours of service with the employer during the previous 12-month period, as required by the Moore-Brown-Roberti Family Rights Act, in order to take parental leave pursuant to these provisions. The bill would require that parental leave taken pursuant to these provisions run concurrently with parental leave taken pursuant to the act, and that the aggregate amount of parental leave taken pursuant to either these provisions or under the act not exceed 12 workweeks in a 12-month period.~~

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~~ 12-workweek 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 *the remaining portion of the 12-workweek period of 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.~~ *no longer require a person employed in an academic position to have 1,250 hours of service with the employer during the previous 12-month period, as required by the Moore-Brown-Roberti Family Rights Act, in order to take parental leave pursuant to these provisions. The bill would require that parental leave taken pursuant to these provisions run concurrently with parental leave taken pursuant to the act, and that the aggregate amount of parental leave taken pursuant to either these provisions or under the act not exceed 12 workweeks in a 12-month period.*

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~~*In school districts that use the differential pay*
 8 *system described in Section 44977, when a person employed in a*
 9 *position requiring certification qualifications has exhausted all*
 10 *available sick leave, including all accumulated sick leave, and*
 11 *continues to be absent from his or her duties on account of parental*
 12 *leave, leave pursuant to Section 12945.2 of the Government Code,*
 13 *the amount deducted from the salary due him or her for any of the*
 14 ~~additional 12 workweeks~~*remaining portion of the 12-workweek*
 15 *period in which the absence occurs shall not exceed the sum that*
 16 *is actually paid a substitute employee employed to fill his or her*
 17 *position during his or her absence or, if no substitute employee*

1 was employed, the amount that would have been paid to a substitute
2 had he or she been employed. The school district shall make every
3 reasonable effort to secure the services of a substitute employee.

4 (3) ~~Notwithstanding paragraph (2), if a school district maintains~~
5 ~~a rule that credits a person employed in a position requiring~~
6 ~~certification qualifications with no less than 100 working days of~~
7 ~~sick leave paid at no less than 50 percent of his or her regular~~
8 ~~salary.~~ *In school districts that use the differential pay system*
9 *described in Section 44983, when he or she a person employed in*
10 *a position requiring certification qualifications has exhausted all*
11 *available sick leave, including all accumulated sick leave, and*
12 *continues to be absent from his or her duties on account of parental*
13 *leave, a leave pursuant to Section 12945.2 of the Government*
14 *Code, the person employed in a position requiring certification*
15 *qualifications shall be compensated at no less than 50 percent of*
16 *his or her regular salary for a period of up to 12 weeks for the*
17 *remaining portion of the 12-workweek period of parental leave.*

18 (b) For purposes of subdivision (a), ~~both~~ all of the following
19 apply:

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

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

26 (3) *Parental leave taken pursuant to this section shall run*
27 *concurrently with parental leave taken pursuant to Section 12945.2*
28 *of the Government Code. The aggregate amount of parental leave*
29 *taken pursuant to this section and Section 12945.2 of the*
30 *Government Code shall not exceed 12 workweeks in a 12-month*
31 *period.*

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

35 (d) ~~(1) Nothing in this section shall be construed as requiring~~
36 ~~a person employed in a position requiring certification~~
37 ~~qualifications to use his or her sick leave for the purposes of~~
38 ~~parental leave as a condition of retaining his or her rights to unpaid~~
39 ~~parental leave pursuant to Section 12945.2 of the Government~~
40 ~~Code or any other law.~~

1 ~~(2) If a person employed in a position requiring certification~~
 2 ~~qualifications elects to receive the differential pay benefit under~~
 3 ~~this section, his or her right to unpaid parental leave pursuant to~~
 4 ~~Section 12945.2 of the Government Code, if any, shall be reduced~~
 5 ~~by the amount of time the employee receives the differential pay~~
 6 ~~benefit.~~

7 *(d) Notwithstanding subdivision (a) of Section 12945.2 of the*
 8 *Government Code, a person employed in a position requiring*
 9 *certification qualifications is not required to have 1,250 hours of*
 10 *service with the employer during the previous 12-month period in*
 11 *order to take parental leave pursuant to this section.*

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

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

26 45196.1. (a) (1) Notwithstanding any other law, during each
 27 school year, a classified employee may use his or her sick leave
 28 for purposes of parental leave for a period of up to 12 workweeks.

29 ~~(2) When the~~*In school districts that use the differential pay*
 30 *system described in the first paragraph of Section 45196, when a*
 31 *employee has exhausted all available sick leave, including all*
 32 *accumulated sick leave, and continues to be absent from his or her*
 33 *duties on account of parental leave, leave pursuant to Section*
 34 *12945.2 of the Government Code, the amount deducted from the*
 35 *salary due him or her for any of the additional 12 workweeks*
 36 *remaining portion of the 12-workweek period in which the absence*
 37 *occurs shall not exceed the sum that is actually paid a substitute*
 38 *employee employed to fill his or her position during his or her*
 39 *absence.*

1 (3) ~~Notwithstanding paragraph (2), if a school district maintains~~
2 ~~a rule that credits classified employees with no less than 100~~
3 ~~working days of sick leave paid at no less than 50 percent of the~~
4 ~~employee's regular salary, *In school districts that use the*~~
5 ~~*differential pay system described in the last paragraph of Section*~~
6 ~~*45196, when an employee has exhausted all available sick leave,*~~
7 ~~*including all accumulated sick leave, and continues to be absent*~~
8 ~~*from his or her duties on account of parental leave, leave pursuant*~~
9 ~~*to Section 12945.2 of the Government Code, the employee shall*~~
10 ~~be compensated at no less than 50 percent of the employee's regular~~
11 ~~salary for a period of up to 12 weeks for the remaining portion of~~
12 ~~the 12-workweek period of parental leave.~~

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

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

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

21 (3) *Parental leave taken pursuant to this section shall run*
22 *concurrently with parental leave taken pursuant to Section 12945.2*
23 *of the Government Code. The aggregate amount of parental leave*
24 *taken pursuant to this section and Section 12945.2 of the*
25 *Government Code shall not exceed 12 workweeks in a 12-month*
26 *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 school district.

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

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

1 (d) Notwithstanding subdivision (a) of Section 12945.2 of the
2 Government Code, a classified employee is not required to have
3 1,250 hours of service with the employer during the previous
4 12-month period in order to take parental leave pursuant to this
5 section.

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

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

18 SEC. 3. Section 87780.1 is added to the Education Code, to
19 read:

20 87780.1. (a) (1) Notwithstanding any other law, during each
21 school year, a person employed in an academic position may use
22 his or her sick leave for purposes of parental leave for a period of
23 up to 12 workweeks.

24 (2) ~~When the~~ *In community college districts that use the*
25 *differential pay system described in Section 87780, when a*
26 *employee has exhausted all available sick leave, including all*
27 *accumulated sick leave, and continues to be absent from his or her*
28 *duties on account of parental leave, leave pursuant to Section*
29 *12945.2 of the Government Code, the amount deducted from the*
30 *salary due him or her for any of the ~~additional 12 workweeks~~*
31 *remaining portion of the 12-workweek period in which the absence*
32 *occurs shall not exceed the sum that is actually paid a temporary*
33 *employee employed to fill his or her position during his or her*
34 *absence or, if no temporary employee was employed, the amount*
35 *that would have been paid to the temporary employee had he or*
36 *she been employed.*

37 (3) ~~Notwithstanding paragraph (2), if a community college~~
38 ~~district maintains a rule that credits a person employed in an~~
39 ~~academic position with no less than 100 working days of sick leave~~
40 ~~paid at no less than 50 percent of the employee’s regular salary,~~

1 *In community college districts that use the differential pay system*
2 *described in Section 87786, when an employee has exhausted all*
3 *available sick leave, including all accumulated sick leave, and*
4 *continues to be absent from his or her duties on account of parental*
5 *leave, leave pursuant to Section 12945.2 of the Government Code,*
6 *the employee shall be compensated at no less than 50 percent of*
7 *the employee's regular salary for a period of up to 12 weeks for*
8 *the remaining portion of the 12-workweek period of parental leave.*

9 (b) For purposes of subdivision (a), ~~both~~ *all* of the following
10 apply:

11 (1) ~~The 12-week 12-workweek~~ *12-workweek* period shall be reduced by any
12 period of sick leave, including accumulated sick leave, taken during
13 a period of parental leave.

14 (2) An employee shall not be provided more than one ~~12-week~~
15 *12-workweek* period for ~~paid~~ parental leave during any 12-month
16 period.

17 (3) *Parental leave taken pursuant to this section shall run*
18 *concurrently with parental leave taken pursuant to Section 12945.2*
19 *of the Government Code. The aggregate amount of parental leave*
20 *taken pursuant to this section and Section 12945.2 of the*
21 *Government Code shall not exceed 12 workweeks in a 12-month*
22 *period.*

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

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

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

36 ~~(d) Notwithstanding subdivision (a) of Section 12945.2 of the~~
37 ~~Government Code, a person employed in an academic position is~~
38 ~~not required to have 1,250 hours of service with the employer~~
39 ~~during the previous 12-month period in order to take parental~~
40 ~~leave pursuant to this section.~~

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~~ *In the community college districts that use the*
 19 *differential pay system described in the first paragraph of Section*
 20 *88196, when a employee has exhausted all available sick leave,*
 21 *including all accumulated sick leave, and continues to be absent*
 22 *from his or her duties on account of parental leave, leave pursuant*
 23 *to Section 12945.2 of the Government Code, the amount deducted*
 24 *from the salary due him or her for any of the additional 12*
 25 *workweeks remaining portion of the 12-workweek period in which*
 26 *the absence occurs shall not exceed the sum that is actually paid*
 27 *a substitute employee employed to fill his or her position during*
 28 *his or her absence.*

29 (3) ~~Notwithstanding paragraph (2), if a community college~~
 30 ~~district maintains a rule that credits classified employees with no~~
 31 ~~less than 100 working days of sick leave paid at no less than 50~~
 32 ~~percent of the employee’s regular salary, In community college~~
 33 *districts that use the differential pay system described in the last*
 34 *paragraph of Section 88196, when an employee has exhausted all*
 35 *available sick leave, including all accumulated sick leave, and*
 36 *continues to be absent from his or her duties on account of parental*
 37 *leave, leave pursuant to Section 12945.2 of the Government Code,*
 38 *the employee shall be compensated at no less than 50 percent of*
 39 *the employee’s regular salary for a period of up to 12 weeks for*
 40 *the remaining portion of the 12-workweek period of parental leave.*

1 (b) For purposes of subdivision (a), ~~both~~ all of the following
2 apply:

3 (1) ~~The 12-week 12-workweek~~ period of parental leave shall be
4 reduced by any period of sick leave, including accumulated sick
5 leave, taken during a period of parental leave.

6 (2) An employee shall not be provided more than one ~~12-week~~
7 *12-workweek* period for ~~paid~~ parental leave during any 12-month
8 period.

9 (3) *Parental leave taken pursuant to this section shall run*
10 *concurrently with parental leave taken pursuant to Section 12945.2*
11 *of the Government Code. The aggregate amount of parental leave*
12 *taken pursuant to this section and Section 12945.2 of the*
13 *Government Code shall not exceed 12 workweeks in a 12-month*
14 *period.*

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

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

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

28 *(d) Notwithstanding subdivision (a) of Section 12945.2 of the*
29 *Government Code, a classified employee is not required to have*
30 *1,250 hours of service with the employer during the previous*
31 *12-month period in order to take parental leave pursuant to this*
32 *section.*

33 (e) Nothing in this section shall be construed to diminish the
34 obligation of a public school employer to comply with any
35 collective bargaining agreement entered into by a public school
36 employer and an exclusive bargaining representative pursuant to
37 Chapter 10.7 (commencing with Section 3540) of Division 4 of
38 Title 1 of the Government Code that provides greater parental
39 leave rights to employees than the rights established under this
40 section.

- 1 (f) For purposes of this section, “parental leave” means leave
- 2 for reason of the birth of a child of the employee, or the placement
- 3 of a child with an employee in connection with the adoption or
- 4 foster care of the child by the employee.

O