



LAW UPDATE LABOR AND EMPLOYMENT

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

November 14, 2016

AB 2393: LEGISLATURE EXPANDS RIGHTS TO EMPLOYEE PAID PARENTAL LEAVE

Assembly Bill 375 added Education Code section 44977.5 effective January 1, 2016 which extended paid sick leave benefits to certificated employees on otherwise normally unpaid maternity or paternity leave. Effective January 1, 2017, that benefit, now called "parental leave," will be extended to virtually all K-12 and community college district employees. Governor Brown signed Assembly Bill 2393 ("AB 2393") on September 30, 2016. AB 2393 amends Education Code section 44977.5 in certain key ways and also adds Education Code sections 45196.1, 87780.1, and 88196.1.

K-12 Districts ~ Certificated Employees

As of January 1, 2017, Education Code section 44977.5 will provide that a certificated employee may use his or her sick leave for purposes of parental leave for up to 12 workweeks. "Parental leave" will mean leave for reason of the birth of an employee's child, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee. In districts that utilize the Education Code section 44977 differential pay or "sub-dock" system for employees on extended illness or accident leave, the same system will apply to employees on parental leave. This means when a certificated employee exhausts all available sick leave, including accumulated sick leave, and continues to be absent from duty due to parental leave pursuant to the California Family Rights Act ("CFRA"), the employee will be paid differential pay or sub-dock for the remainder of the 12-workweek period of absence. Differential pay shall not exceed the sum that is actually paid a substitute employee employed to fill the absent certificated employee's position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to a substitute had he or she been employed.

In districts that utilize the Education Code section 44983 differential pay system or "the 50% pay rule" for employees on extended illness or accident leave, the same system will apply to employees on parental leave. Therefore under this system, when a certificated employee exhausts all available sick leave, including accumulated sick leave, and continues to be absent from his or her duties on account of parental leave, the employee shall be compensated at no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave.

Under either differential pay system, eligibility for parental leave has been expanded. To be eligible for parental leave under the Education Code, employees will not need to meet both traditional eligibility rules of CFRA (the 1,250 hours worked requirement and the 12 months or more worked requirement). Instead, certificated employees who have worked for an employer for 12 months or more, regardless of the number of hours they worked in the last year, will be eligible for parental leave. Certificated employees will be provided only one 12-week period for parental leave during any 12-month period and parental leave shall run concurrently with CFRA child bonding leave, meaning the total amount of parental leave/child bonding leave taken pursuant to Education Code section 44977.5 and CFRA shall not exceed 12 workweeks in a 12-month period.

K-12 Districts ~ Classified Employees

As of January 1, 2017, classified employees will also have the parental leave benefit for up to 12 workweeks pursuant to the new Education Code section 45196.1. That provision will provide that a classified employee shall not be provided more than one 12-workweek period for parental leave during any 12-month period and parental leave shall run concurrently with CFRA child bonding leave, meaning the total amount of parental leave and child bonding leave taken pursuant to Education Code 45196.1 and the CFRA shall not exceed 12 workweeks in a 12-month period. Like certificated employees, classified employees will not have to satisfy both eligibility requirements of CFRA child bonding leave. To be eligible for parental leave under the Education Code, classified employees will only be required to work 12 months or more for the employer, but will not need to have worked 1,250 hours in the previous 12-month period.

In districts utilizing the differential pay system described in section 45196 for employees on extended illness or accident leave, when a classified employee has exhausted all available sick leave, including accumulated sick leave, and continues to be absent from duty due to parental leave, the same differential pay system will apply. This means the amount deducted from the salary due the absent employee on parental leave shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during the employee's absence.

In districts utilizing the differential pay system known as "the 50% pay rule" from the last paragraph of Education Code section 45196 for employees are on extended illness or accident leave, the 50% rule will apply to employees on parental leave as well. Accordingly, when the employee has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from duty due to parental leave, the employee shall be compensated at no less than 50% of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.

Community College Districts

Education Code section 87780.1 regarding academic employees and Education Code section 88196.1 regarding classified employees are virtually identical to their K-12 statutory counterparts described above.

Please contact our office with any questions regarding AB 2393 or other leaves of absence provisions.

— Melissa H. Brown

Education Law Updates are intended to alert Schools Legal Service clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Consult legal counsel as to how the issue presented may affect your particular circumstances.