



LAW UPDATE

LABOR AND EMPLOYMENT

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

November 27, 2018

DISTRICTS WILL NOW BE REQUIRED TO COMPENSATE EMPLOYEES AT LEAST 50% OF SALARY DURING PARENTAL LEAVE

On September 30, 2018, Governor Brown signed into law Assembly Bill (“AB”) 2012, amending the pay provisions during Education Code parental leave for all K-12 and community college certificated, academic, and classified employees. Effective January 1, 2019, school and community college districts will be required to compensate employees taking parental leave at least 50% of their regular salary while on leave, regardless of the differential pay system used by the district.

As previously reported by our office, the Education Code currently provides for parental leave for school and community college employees for one period of up to 12 workweeks during any 12-month period.¹ An eligible employee may use parental leave to bond with his or her newborn child or a child placed with him or her in connection with the employee’s adoption or foster care of the child. Parental leave runs concurrently with child bonding leave under the California Family Rights Act. To be eligible for Education Code parental leave, the employee must have worked for a school or community college district for 12 months or more, but does not need to have worked 1,250 hours in the previous 12-month period.

During the period of parental leave, an employee may use his or her sick leave. If the employee exhausts all available sick leave, including accumulated sick leave, the employee is entitled to receive differential pay for any remaining portion of the 12-workweek period of leave.

The differential pay provided to the employee during parental leave is based on one of two systems: either the “sub-dock” or the “alternative 50%” differential systems. For certificated and academic employees, the employee will receive the difference between his or her regular salary and the amount actually paid to a substitute employee employed to fill his or her position, or the amount that would have been paid to a substitute had one been employed. For classified employees, the employee will receive the difference between his or her regular salary and the amount actually paid to a substitute employed to fill his or her position. Districts may have an alternative system for certificated, academic, and classified employees where the employee will

¹ Education Code sections 44977.5 and 45196.1 for K-12 certificated and classified employees, respectively. Education Code sections 87780.1 and 88196.1 for community college academic and classified employees, respectively.

receive at least 50% of his or her regular salary, regardless of whether a substitute is hired and regardless of the amount paid to a substitute.

AB 2012 amends the parental leave statutes to require that regardless of the type of differential pay system used by the school or community college district, an eligible employee will receive no less than 50% of his or her regular salary for the remaining portion of the 12-workweek period of parental leave.² If the district uses the sub-dock differential pay system described above, the employee will receive the differential rate or 50% of the employee's regular salary, whichever is greater. Districts are advised to review and update as necessary their leave of absence policies, collective bargaining provisions, and forms to comply with these amendments.

Should you have any questions or concerns regarding this topic, please do not hesitate to contact one of our Labor and Employment attorneys.

~ 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.

² This change in the law only affects parental leave and does not affect differential pay during extended illness or accident leave.