

## PAID PARENTAL LEAVE: THE BASICS

Both FMLA and CFRA allow for unpaid child-bonding leave, which is leave taken within the first year after the birth of a new child, or placement of a child for adoption or foster care.

Assembly Bill 2393 amends the Education Code to allow certificated, academic and classified employees to use up to 12 workweeks of sick leave to bond with a new child. In addition, covered employees may be entitled to partial pay for the remainder of the 12 workweeks if they have insufficient sick leave.

### **What is AB 2393?**

AB 2393 amends the Education Code to allow certificated, academic and classified employees to use sick leave and possibly receive substitute differential or 50% pay for up to 12 workweeks of “parental leave.”

The statutes are Education Code §§44977.5 (certificated), 45196.1 (K-12 classified), 87780.1 (academic), and 88196.1 (community college classified).

### **What is parental leave?**

“Parental leave” is leave taken for the birth of a child of the employee or the placement of a child with the employee for adoption or foster care. Both parents are entitled to parental leave regardless of marital status.

### **When does AB 2393 go into effect?**

The new rules are effective January 1, 2017, regardless of the status of any district or county office collective bargaining agreements.

### **Who is covered by AB 2393?**

All persons employed in K-12 and county office certificated and classified positions and community college academic and classified positions are covered by the statutes. This includes administrative, managerial, supervisory and confidential positions.

### **May an employee use sick leave for parental leave?**

Any certificated, academic, or classified employee may use up to 12 workweeks of current and accumulated sick leave for parental leave. The employee may use his or her sick leave for parental leave even if he or she is not eligible for child-bonding leave under FMLA (federal Family and Medical Leave Act of 1993) or CFRA (California Family Rights Act).

### **An employee wants to take 12 workweeks of parental leave but does not have 12 workweeks of sick leave. Will the employee be paid for the rest of the time?**

If an employee wants to take 12 workweeks of parental leave but does not have 12 workweeks of sick leave, he or she may be entitled to partial pay for the remainder. The employee must:

- Exhaust all of his or her sick leave; and
- Be partially eligible for child-bonding leave under CFRA. The employee must have been employed by the district or county office for at least 12 months (which do not have to be consecutive). The employee does not have to have worked 1,250 hours in the prior 12 months.

Assuming the employee meets those requirements, he or she will receive either substitute differential pay or 50% pay for the remainder of the 12 workweeks after sick leave is exhausted. The type of pay is based on the rule the district/county office has adopted for extended illness leave.

**An employee does not want to use all of his or her sick leave for parental leave. Is the employee still entitled to receive substitute differential or 50% pay for the 12 workweeks?**

No. In order to qualify for substitute differential or 50% pay for parental leave the employee must exhaust all sick leave.

If an employee is eligible for CFRA child-bonding leave, including having worked 1,250 hours in the 12 months prior to taking the leave, he or she may still take up to 12 workweeks of unpaid CFRA leave. While the employee will not be paid for the leave, he or she will be entitled to receive fringe benefits under the same terms and conditions as if working.

**How much parental leave may an employee take?**

Employees are entitled to a maximum of 12 workweeks of parental leave in a 12-month period. Paid parental leave under AB 2393 counts against the 12 workweeks of CFRA child-bonding leave.

**Does the substitute differential or 50% pay parental leave come out of the 5 months or 100 days of extended illness leave?**

No. The substitute differential or 50% pay parental leave does not count against the 5 months or 100 days of substitute differential or 50% pay leave available for an employee's own illness.

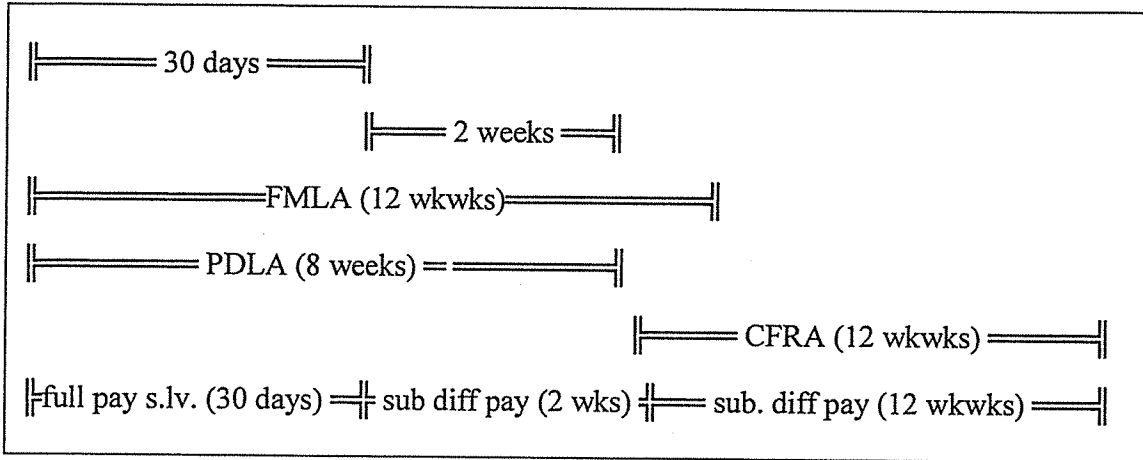
**How will this parental leave affect leave for pregnancy and childbirth-related disability?**

Parental leave does not affect an employee's right to take leave while disabled by pregnancy, childbirth or related medical conditions. An employee who has taken pregnancy disability leave remains entitled to parental leave under the same terms as other employees.

**What if the collective bargaining agreement grants more leave than the new laws?**

Districts and county offices must still comply with collective bargaining agreement provisions that grant greater rights to employees.

*Example 1: A pregnant certificated employee is disabled for 8 weeks, 2 weeks before the birth and 6 weeks afterward. She then wants to take 12 workweeks of child-bonding/parental leave. She has 10 days of current year sick leave and 20 days of accumulated sick leave. The district uses the substitute differential pay rule.*



*Example 2: Classified employee just adopted a child and wants to take 12 workweeks of child-bonding/parental leave. He has 10 days of current year sick leave and 20 days of accumulated sick leave. The district uses the 50% pay rule.*

