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LEGAL UPDATE

October 26, 2016

To: **Superintendents/Presidents/Chancellors, Member Community College Districts**

From: **Nancy L. Klein**
Senior Associate General Counsel

Subject: **New Leaves Legislation Providing for Paid Parental Leave (AB 2393)**
Memo No. 19-2016(CC) - AMENDED

Paid "Parental Leave" for Academic and Classified Employees (Ed. Code §§87780.1 and 88296.1)

Effective January 1, 2017, academic and classified employees are entitled to up to 12 workweeks of paid "Parental Leave" in a 12-month period. "Parental Leave" means leave taken for "reason of the birth of a child of the employee, or the placement of a child of an employee in connection with the adoption or foster care of the child by the employee."

The rate of pay is the employee's full pay if he or she has sufficient sick leave to cover the entire period of Parental Leave. If the employee does not have sufficient sick leave, the rate of pay is as set forth below.

Academic Employees:

1. In districts using the "differential pay" method of calculating extended illness leave compensation, academic employees receive their full rate of pay less the amount actually paid or that would have been paid to the substitute employee to fill his or her position.

2. In districts that have adopted a rule providing for pay at a rate of not less than 50% of regular salary for 100 working days, academic employees receive the locally adopted rate

Classified Employees:

1. In districts using the "differential pay" method of calculating extended illness leave, classified employees receive their full rate of pay less the amount actually paid to the substitute employee to fill his or her position.

2. In districts that have adopted a rule providing for pay at a rate of not less than 50% of regular salary for 100 working days, classified employees receive the locally adopted rate.

An employee is not required to have 1,250 hours of service with the employer during the previous 12-month period to qualify for paid "parental leave" under the Education Code.* An employee who is eligible for CFRA leave may elect to take unpaid CFRA childcare leave and reserve his or her sick leave for later use; however, if an employee elects to receive paid Parental Leave (i.e., use any sick leave for up to 12 workweeks), his or her entitlement to CFRA childcare leave will be reduced by the period of Parental Leave.

Parental Leave + CFRA Childcare Leave = 12 workweeks (Maximum)

Parental Leave
|----------12 workweeks----------|

|==========Sick Leave=========|+++++++++*Differential/50% Rule Pay+++++++++|
**if employee meets modified CFRA eligibility requirements (12 mos. of service w/employer & 50 employees w/i 75 miles)*

Employers are required to honor any collective bargaining agreement providing for greater parental leave rights.

The new Parental Leave provisions are in addition to academic and classified employees' existing rights under Education Code sections 87784.5 and 88207.5 to take up to 30 days of paid leave (less personal necessity leave (academic and classified employees) and compelling personal importance leave (academic employees only) within the first year of the birth or adoption of a child.

Please contact our office with questions regarding this Legal Update or any other legal matter.

For your convenience please see attached AB 2393.

Also, for your convenience please see attached Government Code section 12945.2

Assembly Bill No. 2393

CHAPTER 883

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.

[Approved by Governor September 30, 2016. Filed with Secretary of State September 30, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2393, 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 the remaining portion of the 12-workweek period of parental leave. The bill would 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-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 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-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 the remaining portion of the 12-workweek period of parental leave. The bill would 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.

The people of the State of California do enact as follows:

SECTION 1. Section 44977.5 of the Education Code is amended to read:

44977.5. (a) (1) Notwithstanding any other law, during each school year, a person employed in a position requiring certification qualifications may use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks.

(2) In school districts that use the differential pay system described in Section 44977, when a person employed in a position requiring certification qualifications 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 pursuant to Section 12945.2 of the Government Code, the amount deducted from the salary due him or her for any of the remaining portion of the 12-workweek period in which the absence occurs shall not exceed 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 a substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

(3) In school districts that use the differential pay system described in Section 44983, when a person employed in a position requiring certification qualifications 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 pursuant to Section 12945.2 of the Government Code, the person shall be compensated at no less than 50 percent of his or her regular salary for the remaining portion of the 12-workweek period of parental leave.

(b) For purposes of subdivision (a), all of the following apply:

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

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

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

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

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

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

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

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

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

(2) In school districts that use the differential pay system described in the first paragraph of Section 45196, when a 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 pursuant to Section 12945.2 of the Government Code, the amount deducted from the salary due him or her for any of the remaining portion of the 12-workweek period in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence.

(3) In school districts that use the differential pay system described in the last paragraph of Section 45196, 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 pursuant to Section 12945.2 of the Government Code, the employee shall be compensated at no less than 50 percent of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.

(b) For purposes of subdivision (a), all of the following apply:

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

(2) An employee shall not be provided more than one 12-workweek period for parental leave during any 12-month period.

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

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

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

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

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

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

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

(2) In community college districts that use the differential pay system described in Section 87780, when a 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 pursuant to Section 12945.2 of the Government Code, the amount deducted from the salary due him or her for any of the remaining portion of the 12-workweek period in which the absence occurs shall not exceed 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.

(3) In community college districts that use the differential pay system described in Section 87786, 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 pursuant to Section 12945.2 of the Government Code, the employee shall be compensated at

no less than 50 percent of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.

(b) For purposes of subdivision (a), all of the following apply:

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

(2) An employee shall not be provided more than one 12-workweek period for parental leave during any 12-month period.

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

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

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

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

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

SEC. 4. Section 88196.1 is added to the Education Code, to read:

88196.1. (a) (1) Notwithstanding any other law, during each school year, a classified employee may use his or her sick leave for purposes of parental leave for a period of up to 12 workweeks.

(2) In the community college districts that use the differential pay system described in the first paragraph of Section 88196, when a 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 pursuant to Section 12945.2 of the Government Code, the amount deducted from the salary due him or her for any of the remaining portion of the 12-workweek period in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence.

(3) In community college districts that use the differential pay system described in the last paragraph of Section 88196, 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

pursuant to Section 12945.2 of the Government Code, the employee shall be compensated at no less than 50 percent of the employee's regular salary for the remaining portion of the 12-workweek period of parental leave.

(b) For purposes of subdivision (a), all of the following apply:

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

(2) An employee shall not be provided more than one 12-workweek period for parental leave during any 12-month period.

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

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

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

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

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

O

State of California

GOVERNMENT CODE

Section 12945.2

12945.2. (a) Except as provided in subdivision (b), it shall be an unlawful employment practice for any employer, as defined in paragraph (2) of subdivision (c), to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. Family care and medical leave requested pursuant to this subdivision shall not be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave. The commission shall adopt a regulation specifying the elements of a reasonable request.

(b) Notwithstanding subdivision (a), it shall not be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed.

(c) For purposes of this section:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

(A) Under 18 years of age.

(B) An adult dependent child.

(2) "Employer" means either of the following:

(A) Any person who directly employs 50 or more persons to perform services for a wage or salary.

(B) The state, and any political or civil subdivision of the state and cities.

(3) "Family care and medical leave" means any of the following:

(A) Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.

(B) Leave to care for a parent or a spouse who has a serious health condition.

(C) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(4) "Employment in the same or a comparable position" means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(5) “FMLA” means the federal Family and Medical Leave Act of 1993 (P.L. 103-3).

(6) “Health care provider” means any of the following:

(A) An individual holding either a physician’s and surgeon’s certificate issued pursuant to Article 4 (commencing with Section 2080) of Chapter 5 of Division 2 of the Business and Professions Code, an osteopathic physician’s and surgeon’s certificate issued pursuant to Article 4.5 (commencing with Section 2099.5) of Chapter 5 of Division 2 of the Business and Professions Code, or an individual duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, who directly treats or supervises the treatment of the serious health condition.

(B) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(7) “Parent” means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(8) “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(A) Inpatient care in a hospital, hospice, or residential health care facility.

(B) Continuing treatment or continuing supervision by a health care provider.

(d) An employer shall not be required to pay an employee for any leave taken pursuant to subdivision (a), except as required by subdivision (e).

(e) An employee taking a leave permitted by subdivision (a) may elect, or an employer may require the employee, to substitute, for leave allowed under subdivision (a), any of the employee’s accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes a leave because of the employee’s own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee shall not use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

(f) (1) During any period that an eligible employee takes leave pursuant to subdivision (a) or takes leave that qualifies as leave taken under the FMLA, the employer shall maintain and pay for coverage under a “group health plan,” as defined in Section 5000(b)(1) of the Internal Revenue Code, for the duration of the leave, not to exceed 12 workweeks in a 12-month period, commencing on the date leave taken under the FMLA commences, at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a “group health plan” beyond 12 workweeks. An employer may recover the premium that the employer paid as required by this subdivision for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(A) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(B) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under subdivision (a) or other circumstances beyond the control of the employee.

(2) Any employee taking leave pursuant to subdivision (a) shall continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under paragraph (1), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as apply to an unpaid leave taken for any purpose other than those described in subdivision (a). In the absence of these conditions an employee shall continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at his or her discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, the nonpayment of premiums by an employee shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan.

For purposes of pension and retirement plans, an employer shall not be required to make plan payments for an employee during the leave period, and the leave period shall not be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension plan may continue to make contributions in accordance with the terms of the plan during the period of the leave.

(g) During a family care and medical leave period, the employee shall retain employee status with the employer, and the leave shall not constitute a break in service, for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave shall return with no less seniority than the employee had when the leave commenced, for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

(h) If the employee's need for a leave pursuant to this section is foreseeable, the employee shall provide the employer with reasonable advance notice of the need for the leave.

(i) If the employee's need for leave pursuant to this section is foreseeable due to a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption to the operations of the employer, subject to the approval of the health care provider of the individual requiring the treatment or supervision.

(j) (1) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent who has a serious health condition be supported by a

certification issued by the health care provider of the individual requiring care. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.

(D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(2) Upon expiration of the time estimated by the health care provider in subparagraph (C) of paragraph (1), the employer may require the employee to obtain recertification, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(k) (1) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification shall be sufficient if it includes all of the following:

(A) The date on which the serious health condition commenced.

(B) The probable duration of the condition.

(C) A statement that, due to the serious health condition, the employee is unable to perform the function of his or her position.

(2) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in paragraph (1), if additional leave is required.

(3) (A) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under paragraph (1).

(B) The health care provider designated or approved under subparagraph (A) shall not be employed on a regular basis by the employer.

(C) In any case in which the second opinion described in subparagraph (A) differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under paragraph (1).

(D) The opinion of the third health care provider concerning the information certified under paragraph (1) shall be considered to be final and shall be binding on the employer and the employee.

(4) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a uniformly applied practice or policy that requires the employee to obtain certification from his or her health care provider that the employee is able to resume work. Nothing in this

paragraph shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

(*l*) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by subdivision (a).

(2) An individual's giving information or testimony as to his or her own family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this section.

(m) This section shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until January 1, 1993, whichever occurs first.

(n) The amendments made to this section by Chapter 827 of the Statutes of 1993 shall not be construed to require any changes in existing collective bargaining agreements during the life of the contract, or until February 5, 1994, whichever occurs first.

(o) This section shall be construed as separate and distinct from Section 12945.

(p) Leave provided for pursuant to this section may be taken in one or more periods. The 12-month period during which 12 workweeks of leave may be taken under this section shall run concurrently with the 12-month period under the FMLA, and shall commence the date leave taken under the FMLA commences.

(q) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer shall not be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in subdivision (a).

(r) (1) Notwithstanding subdivision (a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(A) The employee is a salaried employee who is among the highest paid 10 percent of the employer's employees who are employed within 75 miles of the worksite at which that employee is employed.

(B) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer.

(C) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under subparagraph (B).

(2) In any case in which the leave has already commenced, the employer shall give the employee a reasonable opportunity to return to work following the notice prescribed by subparagraph (C).

(s) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the FMLA, except for any leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. The aggregate amount of leave taken under this section or the FMLA, or both, except for

leave taken for disability on account of pregnancy, childbirth, or related medical conditions, shall not exceed 12 workweeks in a 12-month period. An employee is entitled to take, in addition to the leave provided for under this section and the FMLA, the leave provided for in Section 12945, if the employee is otherwise qualified for that leave.

(t) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(Amended by Stats. 2011, Ch. 678, Sec. 2. (AB 592) Effective January 1, 2012.)