



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Ellie R. Austin
Monica D. Batanero
Jennifer Henry
Sarah Hirschfeld-Sussman
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Loren W. Soukup
Erin E. Stagg
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Margaret M. Merchat
Patrick C. Wilson

LEGAL UPDATE

October 26, 2018

To: Superintendents, Member School Districts (K-12)

From: Nancy L. Klein, Senior Associate General Counsel *Nancy Klein*
Sarah Hirschfeld-Sussman, Schools Legal Counsel *SHS*

Subject: Governor Signs Bill Amending Partial Pay During Parental Leave (AB 2012)
Memo No. 35-2018

Governor Brown signed Assembly Bill (“AB”) 2012 on September 30, 2018, amending “parental leave” pay for certificated and classified employees of school districts and classified employees of county offices of education,¹ effective January 1, 2019.²

Existing law allows employees of school districts and county offices of education (collectively Local Educational Agencies, or “LEAs”) to take “parental leave” to bond with their newborn, adopted, or foster child for a period of up to 12 workweeks within one year after the child’s date of birth or placement.³ Employees are required to exhaust all of their current and accumulated sick leave before they are eligible to receive partial compensation for the remainder of the 12 workweeks pursuant to Education Code sections 44977.5 and 45196.1.

Under existing law, upon exhaustion of current and accumulated sick leave, employees are compensated in accordance with either the differential pay or the fifty percent pay system in effect at the LEA.

Under the differential pay system, certificated employees receive the difference between their regular salary and the amount actually paid to their substitute or the amount that would have been paid to their substitute had one be hired.⁴

¹ The collective bargaining agreement and/or the county superintendent’s policies or procedures may make AB 2012 also applicable to certificated employees of a county superintendent.

² Assembly Bill 2012 is available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2012.

³ Education Code sections 44977.5, 45196.1 & 1311.

⁴ Education Code section 44977.5(a)(2).



Classified employees receive the difference between their regular salary and the amount actually paid to their substitutes.⁵ Under the fifty percent pay system, certificated and classified employees are compensated at a rate of at least fifty percent of their regular salary.⁶

Effective January 1, 2019, employees who continue to take parental leave after exhaustion of all available sick leave must be paid at a rate not less than 50% of their regular salary, without regard to the pay system in effect at the LEA. If the LEA uses the differential pay system, they must pay the employee the differential rate or 50% of the employee's regular salary, whichever is greater.

Please note that, after exhaustion of all sick leave, employees are entitled to partial compensation only if they qualify and continue their leave of absence for baby bonding purposes pursuant to the California Family Rights Act (CFRA).⁷ Employees who are not eligible for CFRA leave are not entitled to partial pay under Education Code sections 44977.5 or 45196.1.

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

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2018 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client's own non-commercial purposes.

⁵ Education Code section 45196.1(a)(2).

⁶ Education Code sections 44977.5(a)(3) & 45196.1(a)(3).

⁷ Government Code section 12954.2.