
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No:	AB 2464	Hearing Date:	June 13, 2022
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Urgency:	No	Fiscal:	Yes
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SUBJECT: California State University: employees: paid parental leave of absence

KEY ISSUE

Should the Legislature require the California State University to provide employees with a paid leave of absence of one semester, as specified, following the birth of a child of the employee or the placement of a child with an employee in connection with adoption or foster care placement?

ANALYSIS

Existing law:

- 1) Under the California Family Rights Act (CFRA), makes it an unlawful employment practice for an employer, of 5 or more employees, to refuse to grant a request by an eligible employee to take up to 12 workweeks of *unpaid, job-protected* leave during any 12-month period to:
 - a) Care for a child born to, adopted by, or placed for foster care with the employee.
 - b) Care for the employee's child, parent, grandparent, grandchild, siblings, spouse, or domestic partner who has a serious health condition, as defined.
 - c) Address an employee's own serious health condition rendering them unable to perform the functions of their job.
 - d) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.
(Government Code §12945.2)
- 2) Specifies the following with regards to CFRA:
 - a) Defines "employer" as any person who directly employs five or more employees, including the state, and any political or civil subdivision of the state and cities.
 - b) Eligible employees must have at least 1,250 hours of service with the employer during the previous 12-month period.
 - c) Authorizes an employer to require that an employee's request for leave to take care of a family member, as specified, be supported by a certification issued by the health care provider of the individual requiring care.
 - d) Requires the employer to maintain and pay for coverage under a "group health plan" for the duration of the leave at the same level and conditions.
(Government Code §12945.2)

- 3) Under the federal Family and Medical Leave Act (FMLA), entitles eligible employees of covered employers (with 50 or more employees) to take up to twelve weeks of unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. (29 CFR Part 825, The Family and Medical Leave Act of 1993)
- 4) Establishes the Paid Family Leave (PFL) program as a partial wage-replacement plan funded through employee payroll deductions and entitles eligible employees with *up to eight weeks of wage replacement benefits* to take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption, or to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. (Unemployment Insurance Code §3301)
- 5) Provides a PFL wage replacement equal to one-seventh of the employee's weekly benefit amount for each full day during which the individual is unable to work, a wage replacement of approximately 60-70 percent depending on income. (Unemployment Insurance Codes §2655 and §3301)
- 6) PFL does not provide job protection or return to work rights nor does it require continued health coverage during the leave. However, PFL can be taken concurrently with CFRA, for eligible employees, and thus entitle employees to these protections. (Unemployment Insurance Codes §2655 and §3301)
- 7) Establishes the Donahoe Higher Education Act, setting forth the mission of the UC, CSU, and California Community Colleges (CCC). (Education Code § 66010, et seq.)
- 8) Confers upon the CSU Trustees the powers, duties, and functions with respect to the management, administration, control of the CSU system and provides that the Trustees are responsible for the rule of government of their appointees and employees. (Education Code §66606 and §89500, et seq.)
- 9) Requires the CSU Trustees to grant pregnancy leave without pay to female permanent employees for a period not exceeding one year, as determined by the employee except when the employee has notified the trustees as to the period of the leave of absence, any change in the length of the leave is not effective unless approved by the CSU Trustees. (Education Code §89519)
- 10) For purposes of higher education employer-employee relations, defines "Employee" or "higher education employee" as any employee, including student employees whose employment is contingent on their status as students, of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. (Government Code §3562 (e))

This bill:

- 1) Requires the trustees of the California State University (CSU) to grant an employee a leave of absence with pay for one semester of an academic year, or equivalent duration, in a one-year period, following 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.
- 2) Specifies that for purposes of these provisions, “employee” has the same meaning as in subdivision (e) of Section 3562 of the Government Code (noted above under existing law).
- 3) Requires the leave of absence to be taken in consecutive periods unless otherwise agreed to by mutual consent between the employee and an appropriate administrator. Specifies that only working days shall be charged against the leave of absence.
- 4) Specifies that, if these provisions conflict with the provisions of a memorandum of understanding reached, as specified, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

COMMENTS

1. Benefits of Paid Leave Policies:

The benefits of paid leave policies are well established. Providing new parents with paid time off to care for newborns or recently adopted children contributes to the child’s healthy development, improves maternal health, supports fathers’ involvement in care, and enhances families’ economic security. Paid leave benefits employers by improving retention and productivity, and can boost labor force participation.

Research shows that paid parental leave policies significantly improve maternal physical and mental health by allowing mothers time to recover from childbirth and adjust to new caregiving responsibilities. About half of women report experiencing pain within the first two months following childbirth, and many experience more serious, potentially life-threatening postpartum complications.¹ A substantial majority of new mothers experience “baby blues” after childbirth, and for about 1 in 5 that condition develops into postpartum depression, with those who are economically insecure at greater risk. Mothers who take paid family leave are less likely to experience symptoms of postpartum depression and less likely to report parenting stress.

According to the National Partnership for Women & Families, providing 12 weeks of paid parental leave on a national scale would lead to 600 fewer infant deaths per year, according

¹ Eugene R. Declercq *et al.*, “Listening to MothersSM III: Pregnancy and Birth,” Childbirth Connection, May 2013, <https://www.nationalpartnership.org/our-work/resources/health-care/maternity/listening-to-mothers-iii-pregnancy-and-birth-2013.pdf>; Brigid Schulte *et al.*, “Paid Family Leave: How Much Time is Enough?” New America, June 2017, <https://www.newamerica.org/better-life-lab/reports/paid-family-leave-how-much-time-enough/maternal-health-and-wellbeing/#>.

to conservative estimates.² Additionally, participation in paid leave programs has been associated with better health outcomes for children in elementary school, especially among children from low-income families.

2. Existing Parental Leave Rights and Protections:

Prior to 2021, the California Family Rights Act entitled eligible employees of covered employers with *50 or more employees* to take up to 12 workweeks of **unpaid, job-protected** leave during a 12 month period for specified family care and medical leave reasons. CFRA defined “family care and medical leave” as 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 seriously ill parent or spouse
- c) Leave because of an employee’s own serious health condition

In 2020, after almost a decade of attempts, the scope of CFRA was expanded to apply to employers with **five or more employees** (including the state, and any political or civil subdivision of the state and cities) and allow employees to take leave to care for domestic partners, child of domestic partner, grandparents, grandchildren, siblings, and parent-in-laws. CFRA’s federal counterpart, FMLA, continues to apply to employers of 50 or more.

The Paid Family Leave program, as noted under existing law, provides a partial 60-70 percent wage-replacement benefit for up to eight weeks of leave and, when taken concurrently with CFRA, entitles the employee to a job upon completion of the leave. School employees, however, are not eligible for Paid Family Leave benefits if:

- Full wages were or will be paid to the employee during the contract period when services were performed.
- A period of family leave overlaps with a school break and the employee is not scheduled to work, does not have a history of working during the break, or does not have an additional employer.
- The family leave period extends through the school break period.

However, if the employee is not receiving wages but would have been working for extra income if not on family leave (such as teaching summer school classes or other secondary job), then the employee may be eligible for benefits to replace the additional income.

3. Paid Maternity/Paternity Leave at CSU:

In December 2021, the CSU and California Faculty Association (CFA) reached a tentative agreement on a new contract for 2022-24. On February 3, 2022, the contract was ratified and is in effect until June 30, 2024. Among other things, the contract calls for a 4% general salary increase retroactive to 7/1/21. Regarding leaves of absence with pay, the collective bargaining agreement provides the following:

² National Partnership for Women & Families, “The Child Development Case for a National Paid Family and Medical Leave Program,” December 2018, <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/the-child-development-case-for-a-national-paid-family-and-medical-leave-insurance-program.pdf>

Paid Maternity/Paternity Leave

23.4 A bargaining unit employee shall be entitled to a maximum of thirty (30) days of parental leave for the reasons specified in provision 22.10 of this Agreement. Such leave shall be taken consecutively, unless mutually agreed otherwise by the employee and the appropriate administrator. This leave shall commence within a one hundred and thirty-five (135) day period beginning sixty (60) days prior to the anticipated arrival date of a new child and ending seventy-five (75) days after the arrival of a new child. Such leave shall be charged only for workdays in such a period of time and may be used 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.

23.5 A paid parental leave granted in accordance with provision 23.4 runs concurrently with other parental, pregnancy disability and/or family care and medical leave provisions of Article 22, Leaves of Absence Without Pay, and may be supplemented in accordance with the provisions of Article 24, Sick Leave, of this Agreement. Normally, fifteen (15) days of earned sick leave may be charged. A physician's verification of disability shall be required for the use of earned sick leave pursuant to this provision in excess of fifteen (15) days.

Parental Support Workgroup

According to materials provided to the Committee, the new contract did not change the parental policy (providing 30 paid parental leave days) but it did, however, establish a Parental Support Workgroup. On December 17, 2021, CFA and the CSU signed a Memorandum of Understanding (MOU) agreeing to form this workgroup to review parental support for faculty, at the CSU and other higher education institutions, along with leave utilization and trends within the CSU. The workgroup will create a report of their findings and that report will be given to the Academic Senate, the Board of Trustees, and the Chancellor within six months of the first meeting. Additionally, the MOU included a provision that the parties further agree that the CSU may increase the number of paid parental leave days provided in the CBA at any time. The workgroup held its first meeting on June 6, 2022 and a report is expected in December 2022.

4. Need for this bill?

As noted above, CSU employees are currently entitled to a 30 day (6 week) fully paid parental leave. Employees are able to extend this time with the use of vacation or sick leave and are protected for up to twelve weeks of unpaid leave under CFRA/FMLA. This bill requires the CSU to provide a *paid leave of one semester*, or equivalent, in a one-year period. CSU semesters are 15 weeks of classes and one week of finals, for a total of 16 weeks.

According to the author, "The California State University system currently provides a maximum of 30 days of paid parental leave for faculty. Thirty days is not enough for new parents to bond and take care of their children. It is not enough time for bodies to heal from childbirth. AB 2464 would change the existing policy by allowing a *minimum* of one semester or two quarters (depending on the campus) of paid parental leave. Legislation is required to resolve this problem as the CSU Chancellor's office has refused to provide this benefit to faculty through the bargaining process and this poses hardships for our faculty that are new parents and are already facing other issues such as securing safe and adequate child

care for when faculty are expected to return to campus, housing insecurity, long commutes, inflation, etc.”

5. Proponent Arguments:

According to the sponsors of the measure, the California Faculty Association, this bill “simply is a health and safety issue for our faculty members that needs to be addressed appropriately. AB 2464 would remedy this situation by requiring the CSU to provide employees a minimum of a full semester or two quarters of paid parental leave. A minimum would benefit students in many ways; if faculty are provided a semester off, there is less manipulation of schedules and pressure on faculty to find others to take over their workload. Much of that burden falls on faculty and adds to the stress soon-to-be parents are already facing. Providing for adequate parental leave will improve career advancement and will create greater equity for women faculty and particularly women faculty of color.

Additional support from NARAL Pro-Choice notes, “CSU’s insufficient 30 days for new parents is a threat to the health and safety of its employees and their families and falls 25 weeks short of the average length for countries with national paid parental leave. Insufficient and inequitable access to paid family leave also exacerbates racial inequities, and access to a semester long leave would help address structural racism. Sufficient parental leave is also associated with decreased low-birthweight and infant mortality and improved maternal mental health.”

6. Opponent Arguments:

The California State University is opposed to the measure and argues that this bill violates the collective bargaining process and removes the fiduciary responsibility entrusted with the Board of Trustees. They write, “While we agree with the author’s goal of providing paid parental leave for the birth of a child or the placement of a child in connection with the adoption or foster care by the employee, the CSU believes these discussions should occur through the collective bargaining process rather than through legislation. Employees are currently entitled to six weeks of fully paid parental leave and can access more paid leave time with non-industrial disability insurance, vacation, and sick leave. The CSU has a diverse range of employees and has a history of working with labor unions to address the specific needs of our represented employees. Unlike many parental leave programs that require employees to work for a specified amount of time to access the benefit, CSU generously allows its employees to access paid parental leave *immediately* upon employment. We also recognize that the general parameters of the generous leave options available to CSU employees may not fit the needs of all employees. This is reflected in the negotiated language used in our collective bargaining agreements (CBAs) which allow for equitable adjustments or flexibility in the application of these benefits.

Unfortunately, AB 2464 goes outside of the collective bargaining process to extend paid parental leave from six weeks to sixteen weeks for all CSU employee groups except confidential and managerial employees. This significant expansion in both duration of leave time and number of eligible employees does not consider the fiscal impacts to the system. The bill is estimated to cost the system \$24.1 million annually. If more employees choose to utilize the benefit under this bill, the financial impact will be greater. The collective bargaining process allows both parties to consider factors unique to that employee group and

customize the leave policy accordingly. When the CSU and California Faculty Association (CFA) ratified a new CBA on February 3, 2022, they signed a memorandum of understanding to form a parental support workgroup to review parental support for faculty and prepare a report of the findings. The parties have begun meeting to further examine this topic and will issue a report in December 2022. The workgroup and our collective bargaining process is the most appropriate way to address the number of paid parental leave days or make other changes to parental leave policy.”

7. Double referral:

This bill has been double referred and if passed by our committee today, will be sent to Senate Education Committee for a hearing.

SUPPORT

California Faculty Association (Sponsor)
California Federation of Teachers, AFL-CIO
California Labor Federation, AFL-CIO
California State University Employees Union
First 5 Association of California
NARAL Pro-Choice California

OPPOSITION

California State University, Office of the Chancellor

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