



Frequently Asked Questions (FAQs) Implementation of Child Bonding/Parental Leave AB 375 and AB 2393

Background

In 2015, Assembly Bill (AB) 375 added section 44977.5 to the Education Code to provide certificated employees access to differential pay while on a leave of absence occasioned by the birth of the employee's child, or the placement of a child in connection with the adoption or foster care of the child by the employee as provided by the California Family Rights Act (CFRA).

In 2016, AB 2393 made additional, significant changes to child bonding leaves. Specifically, AB 2393 extends differential pay entitlements during bonding leave to certificated and classified employees in K-12 school districts. This bill removed the requirement that employees must have worked 1,250 hours during the immediately preceding 12 months in order to qualify for the leave. The terms and conditions of bonding leave generally remain governed by CFRA or the federal Family Medical Leave Act (FMLA), whichever of the two laws provides the greater benefit.

Effective January 1, 2017, AB 2393 amends Education Code section 44977.5 (K-12 certificated employees) and adds Education Code sections 45196.1 (K-12 classified employees), 87780.1 (CCD academic employees), and 88196.1 (CCD classified employees).

1. *What is "parental leave"?*

AB 375 referred to leave for reason of the birth or placement of a child as "maternity or paternity leave." AB 2393 now uses the term "parental leave," which it defines as "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." This leave is commonly referred to as "bonding leave".

2. *Did AB 375 or AB 2393 amend CFRA, Pregnancy Disability Leave (PDL), and/or FMLA, in addition to the California Education Code?*

AB 2393 changed only the Education Code by amending Education Code section 44977.5 and adding sections 45196.1, 87780.1, and 88196.1. AB 2393 (and AB 375 before that) creates a pay benefit under the Education Code during an otherwise unpaid leave.

3. Which employees are eligible for AB 2393 parental leave benefits?

AB 2393 applies to eligible certificated and classified employees of school districts. In order to be eligible for parental leave under the Education Code, you must have been employed by DUSD for 12 months. This expands parental leave benefits to part-time employees who otherwise would not be eligible. The 1,250-hour requirement was eliminated for parental leave under the Education Code but it still applies to other CFRA/FMLA-qualifying leaves, such as leave for an employee's own serious health condition.

4. How do I determine if I have met the 12-month eligibility requirement?

Under CFRA regulations, to be eligible for bonding leave you must have worked for the district for at least 12 months. For instance, if a first year probationary employee is employed on September 1 of year one, he/she would become eligible on September 1 of year two even if he/she did not work over the summer break.

5. How much bonding or parental leave am I entitled to as an eligible employee?

Under the CFRA regulations, you are entitled to 12 workweeks of bonding leave to be utilized during the first year following the birth or placement of a child with the parent through foster care or adoption. Twelve workweeks means the equivalent of 12 of your normally scheduled workweeks. If, for example, you normally work three days per week, then you would be entitled to 12 3-day workweeks of leave. AB 2393 clarifies that employees are only entitled to one 12-workweek period of parental leave in any 12-month period.

6. What if both parents work for the district?

Where both parents are employees of DUSD, the District will limit the period of bonding leave to 12 total workweeks to be shared between the two parents.

7. When will I begin receiving differential pay while on bonding leave?

You must first exhaust all available sick leave, including all accumulated sick leave, and continue to be absent from your duties on account of parental leave in order to gain access to differential pay. The 12-workweek differential period is reduced by any period of sick leave, including accumulated sick leave, taken during parental leave. For example, if you use seven weeks of sick leave and accumulated sick leave during your bonding leave – assuming this exhausts all such available leave – you are then eligible to receive differential pay for the remaining balance of the 12-week period – an additional 5 weeks of leave. Any employee who elects not to exhaust his/her sick leave during the parental leave is ineligible for and cannot access the partial pay benefit.

8. What benefits and salary will I receive under AB 2393?

While out on parental leave, you are entitled to receive any applicable health benefits you were receiving immediately before the commencement of the leave. You are still required to pay your regular contribution while on parental leave.

Certificated: The district must make every reasonable attempt to secure the services of a substitute, but if it is unable to find a substitute, it may deduct from the employee's salary the amount that would have been paid a substitute.

Classified: The district must ensure that an employee is compensated at no less than fifty percent of his/her salary during the partial pay period.

9. *What if I have exhausted my "normal" five months of differential pay prior to going on leave?*

If you have already exhausted your "normal" five months of differential pay for a personal injury or illness under preexisting Education Code provisions, including a leave for pregnancy disability, you are nevertheless entitled to up to 12 workweeks of differential pay for bonding purposes.

10. *What if I do not use the entire 12 weeks of parental leave in one school year?*

AB 2393 clarifies that you are only entitled to one 12-workweek differential pay period during any 12-month period. However, this leave may be utilized anytime during the year following birth or placement of a child and may be split over two school years if it has not been exhausted in accordance with the CFRA limitations discussed in Question 11 below. For instance, if a child is placed with you on May 1 of year one and you use six weeks of bonding leave during that year, you will have six remaining weeks to use before May 1 of year two.

11. *Can parental leave benefits be used intermittently, or must they be used in one continuous period?*

A bonding leave does not have to be taken in one continuous period of time, subject to some limitations. Under CFRA regulations, the minimum duration of the leave shall be two weeks, except that employers must grant a request for a leave of less than two weeks' duration on any two occasions. Any leave taken must be concluded within one year of the birth or placement of the child with the employee.

CFRA regulations provide that, under certain circumstances, an employee who has been granted an intermittent or reduced schedule leave for bonding purposes may be required to transfer temporarily to an available alternative position. Any such transfer must comply with applicable collective bargaining agreements, law, and district policy.