

# CLIENT NEWS BRIEF

## 12 Weeks of Differential Pay Now Available for Certificated Employees on CFRA Maternity/Paternity Leave

On October 1, 2015, Governor Jerry Brown signed Assembly Bill (AB) 375, which creates a right to twelve weeks of differential pay for certificated employees who take maternity or paternity leave under the California Family Rights Act (CFRA). Until this bill, the CFRA only provided for an unpaid leave of absence for baby-bonding.

Effective January 1, 2016, AB 375 adds Education Code section 44977.5 which establishes the right to differential leave for up to twelve weeks when a certificated employee takes maternity or paternity leave under the CFRA. "Maternity or paternity leave" is defined 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. Under AB 375, the right to twelve weeks of differential pay for maternity/paternity leave is reduced by any paid sick leave used during the maternity/paternity leave.

Traditional differential leave under Education Code section 44977 provides partially paid leave for up to five months if a certificated employee is unable to work due to illness, injury or accident after available paid leaves have been exhausted. The new law does not change the calculation method to determine how much an employee is paid during differential leave. While on differential leave, an employee is paid his/her salary minus the amount paid to a substitute hired to replace the employee while on leave. If no substitute is hired, the employee's salary is reduced by the amount that would have been paid to a substitute had one been hired.

The new differential pay right applies only once for each maternity/paternity leave taken by an employee under the CFRA. However, if a school year terminates before the 12-week leave period is exhausted, the employee may exhaust the balance of his/her differential pay for maternity/paternity leave if baby-bonding leave is continued in the subsequent school year.

To the extent AB 375 conflicts with a provision of a collective bargaining agreement entered into before January 1, 2016, AB 375 shall not apply until expiration or renewal of the collective bargaining agreement.

Notably, no parallel provisions were included in AB 375 to extend these rights to classified employees, even though classified employees are also entitled to traditional differential leave. For the time being, this expansion of paid leave rights is unique to certificated staff.

AB 375 is a new law and there may be impacts or implementation issues that have not been addressed in the legislation or the bill's legislative history. School employers should watch for further updates in the coming year. Additionally, school districts should be mindful of potentially reimbursable costs that will be generated by this new state mandate, and maintain records for possible submission as a reimbursable mandated cost.

For more on information on AB 375, its implications on leaves, and the complex interaction between federal and California leave laws, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

October 2015  
Number 56



Darren C. Kameya  
Partner and Labor and Employment  
Practice Group Co-Chair  
Los Angeles Office  
dkameya@lozanosmith.com



Michelle L. Cannon  
Senior Counsel  
Sacramento Office  
mcannon@lozanosmith.com



Gabriela D. Flowers  
Associate  
Sacramento Office  
gflowers@lozanosmith.com



*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*