We Have Come A Long Way

Prior to 1974, school districts all over the United States had rules that required pregnant teachers to take mandatory pregnancy leave without pay when a teacher was four months pregnant. Many districts also required the teacher to remain on leave after the birth of their baby, until the beginning of the next school year.¹

Sick leave and health insurance benefits were also denied to pregnant teachers.

CTA and NEA challenged these discriminatory rules in the courts. My brother, Ernie Tuttle’s first teacher case in 1972 was on this very issue.

In 1974, the United States Supreme Court, in Cleveland Board of Education v. LaFleur (1974) 94 S.Ct. 791, held that these mandatory pregnancy leave policies were unconstitutional. Afterwards, the California Education Code was amended. California Education Code Section 44965 now provides in essence that it is up to the teacher and her doctor to determine when to take leave prior to the birth of the baby, and that pregnancy had to be treated as any other temporary disability for purposes of sick leave and fringe benefits. Subsequently, Congress passed the Family Medical Leave Act (FMLA), and California has enacted a Pregnancy Disability Leave law (PDL), Government Code §12945 and the California Family Rights Act (CFRA), Government Code §12945.2. These laws have significantly increased rights and benefits for pregnancy and childcare.

Salary and Leave Rights Before Birth

1. Teachers have the right to take a leave of absence as determined by the teacher and her doctor. Education Code Section 44965.

2. Teachers can use their regular sick leave until it is exhausted and then they can use their differential sick leave. Education Code Sections 44965, 44978, 44977.

¹ This newsletter is intended for general informational purposes only and is not intended to solicit business or create an attorney/client relationship. Every factual situation is different. Consult your local GLS attorney if you have specific questions.
Education Code Sections 44978 and 44977 are the sick leave and differential pay sections. Many collective bargaining agreements incorporate these laws. However, teachers would be entitled to these rights, whether they are included in the bargaining agreement or not. Section 44978 provides for ten days of full pay per year, and allows the days to be accumulated. Education Code Section 44977 provides that after a teacher has exhausted all regular 44978 sick leave, the teacher is entitled to five months, (100 school days) of differential pay, which is the difference between their salary and the money that is paid to a substitute.

3. Teachers have the right to use any private disability-income protection insurance they have previously purchased. We strongly recommend teachers purchase a disability insurance-income protection policy since most teachers are not covered by the regular state disability insurance program because they do not pay into it.

4. The California Pregnancy Disability Leave law (PDL), Government Code Section 12945 provides for a 4 month leave, where the employee may use accrued vacation pay and paid medical benefits which is less than the benefits a teacher is entitled to under the Education Code.

**Salary and Fringe Benefit Rights After Birth**


After the birth the baby, a teacher is entitled to use any unused sick leave, differential pay and any purchased disability insurance until her doctor releases her to return to work, which is usually six to eight weeks after the birth of the baby. The teacher may return to work once her doctor says that she can return to work.

4. Medical Benefits. A teacher’s medical benefits are normally paid during the time she is on sick leave and differential pay under the Education Code and Collective Bargaining Agreement. The Family Medical Leave Act (FMLA) also requires the employer to provide paid medical benefits under the group health benefits plan for a total of twelve workweeks. Employers may not discriminate between the pregnancy disability leave and other temporary disabilities with respect to benefits such as “health plans.” California Government Code Section 12945.2; 2 Cal. Code Regs. Section 7291.11(c). Teachers’ rights to salary and
benefits under the Education Code and Collective Bargaining Agreement may be greater than the rights under the FMLA, PDL and CFRA.

**Child Care Bonding Rights**

1. Education Code Section 44977.5 became effective January 1, 2016. It provides that the teacher can use his/her sick leave up to 12 workweeks for parental leave (Baby Bonding) pursuant to Section 12945.2 of the Government Code. If sick leave has been exhausted, then the teacher can use differential pay for any of the remaining portion of the 12 workweeks. Effective January 1, 2019, Education Code Section 44977.5 was amended to provide that “regardless of the type of differential pay system used by the school district…the compensation the employee shall receive shall be no less than 50 percent of his/her regular salary for the remaining portion of the 12-workweek period of parental leave.” Along with differential pay, the teacher will receive paid medical benefits during this time. Thus, both the mother and the father are entitled to paid leave and benefits for baby bonding under the Education Code. The parent leave taken under the Education Code runs concurrent with the parent leave taken under the Government Code 12945.2 but teachers are not required to have 1250 hours of service in the previous 12 month period in order to take parental leave.

2. The California Family Rights Act (CFRA) at Government Code Section 12945.2 provides that a mother has the right to take up to 12 workweeks (three months) of unpaid leave from work to bond and care for her baby. The right to this leave may follow any leave taken under the California Pregnancy Disability Leave law (PDL). The PDL and the CFRA are separate rights, which do not run concurrently. Government Code Section 12945.2

3. Under the CFRA, a father also has the right to take up to 12 workweeks (three months) of unpaid leave to bond with and care for his baby. Government Code Section 12945.2. This leave can be taken after the mother’s 12 workweeks have been exhausted.

4. Medical Benefits. The Family Medical Leave Act (FMLA) and the CFRA both provide the employee with 12 workweeks of paid group health benefits during leave for childcare and bonding. However, the number of weeks that the mother is entitled to under FMLA will depend on how long, if any, she was out on disability. The CFRA provides for an additional 12 weeks of paid medical benefits for baby bonding beyond the employee’s illness or
disability from childbirth. Government Code Section 12945.2(c)(3) (A) & (C). The father is entitled, under FMLA and CFRA to a total of 12 weeks of paid health benefits during his leave. Government Code Section 12945.2(f).

For example: In a typical case, a pregnant teacher is disabled for six to eight weeks after the baby is born, which would be covered by the PDL and Education Code. Then, she could take up to twelve weeks for baby bonding with sick leave and differential pay and medical benefits under the Education Code. Under the CFRA, the employee’s 12 week leave would be without pay but with paid medical benefits. The father then may take leave to care for the baby for an additional 12 weeks with sick leave, differential pay and benefits under the Education Code, but only with paid medical benefits under the California Family Rights Act. However, if the mother and father work for the same employer, the employer can limit or aggregate the childcare bonding leave to a total of 12 workweeks. 2 Cal Code Regs Section 7297.1(c) and 29 CFR Section 825.202.

The above-described rights and benefits under the Education Code and Collective Bargaining Agreement, the FMLA, the PDL and the CFRA overlap and some run concurrently with each other. Therefore, they must be read and construed together when applied to the individual teacher’s factual situation. Generally, the rights provided by the Education Code are greater than those under the FMLA, PDL and CFRA.