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SB-1085 Public employees: leaves of absence: exclusive bargaining representative service. (2017-2018)

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Date Published: 09/28/2018 09:00 PM

Senate Bill No. 1085

CHAPTER 893

An act to add Section 3558.8 to the Government Code, relating to public employment.

[Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1085, Skinner. Public employees: leaves of absence: exclusive bargaining representative service.

Existing law, including the Meyers-Milias-Brown Act, the Ralph C. Dills Act, the Trial Court Employment Protection and Governance Act, the Trial Court Interpreter Employment and Labor Relations Act, the Judicial Council Employer-Employee Relations Act and the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, as well as provisions commonly referred to as the Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act, regulates the labor relations of the state, the courts, specified local public agencies, and their employees. Existing law establishes other requirements relating to labor relations that are applicable to certain transit agencies. These acts grant specified public employees the right to form, join, and participate in the activities of employee organizations of their choosing and require public agency employers, among other things, to meet and confer with representatives of recognized employee organizations and exclusive representatives on terms and conditions of employment. Existing law requires the California State University, the governing board of a school district, and the governing board of a community college district to grant specified employees a leave of absence without loss of compensation, as specified, for the purpose of enabling the employee to serve as an elected officer of specified employee organizations.

This bill would require public employers, subject to the acts described above, and specified public employers of transit workers, upon request of the exclusive representative of an employee, to grant reasonable leaves of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the exclusive representative, or of any statewide or national employee organization with which the exclusive representative is affiliated. The bill would specify that leave may be granted on a full-time, part-time, periodic, or intermittent basis, in accordance with certain procedures.

The bill would grant the steward or representative, at the conclusion or termination of the leave granted, the right of reinstatement to the same position and work location held before the leave, or, if not feasible, a substantially similar position without loss of seniority, rank, or classification. The bill would provide that the exclusive representative is not obligated to use leave under this provision and may terminate that leave at any time, for any reason. The bill would require the exclusive representative or employee organization to reimburse the public employer for all compensation paid to the employee on leave, unless otherwise agreed to, as specified. The bill would specify that compensation during leave granted is required to include retirement fund contributions, the employee is to earn full service credit during the leave, and is required to pay his or her membership contributions, unless the employer has agreed to pay the contributions on the employee's behalf, as specified. The bill would also

provide that a public employer is not liable for acts, omissions, or injuries suffered by employees that occur during the course and scope of the employee's leave, as prescribed.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3558.8 is added to the Government Code, to read:

3558.8. (a) A public employer shall grant to public employees, upon request of the exclusive representative of that employee, reasonable leaves of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the exclusive representative, or of any statewide or national employee organization with which the exclusive representative is affiliated. Leave may be granted on a full-time, part-time, periodic, or intermittent basis.

(b) Procedures for requesting and granting leave shall be determined by mutual agreement between the employer and exclusive representative. The exclusive representative or employee organization shall reimburse the public employer for all compensation paid to the employee on leave unless otherwise provided by a collective bargaining agreement or memorandum of understanding. Reimbursement by the exclusive representative or employee organization shall be made on or before 30 days after receipt of the public employer's certification of payment of compensation to the employee.

(c) At the conclusion or termination of leave granted under this section, the steward or representative shall have a right of reinstatement to the same position and work location held prior to the leave, or, if not feasible, a substantially similar position without loss of seniority, rank, or classification.

(d) The exclusive representative has no obligation to use leave under this section for an employee and may terminate that leave at any time, for any reason.

(e) Compensation during leave granted under this section shall include retirement fund contributions required of the public employer as an employer. The employee shall earn full service credit during the leave of absence and shall pay his or her member contributions unless the employer has agreed in a memorandum of understanding or collective bargaining agreement to pay the contributions on the employee's behalf.

(f) A public employer shall not be liable for an act or omission of, or an injury suffered by, an employee of the public employer if that act, omission, or injury occurs during the course and scope of the employee's leave under this section to work for the exclusive representative or affiliated employee organization. If a public employer is held liable for such an act, omission, or injury, the exclusive representative or affiliated employee organization shall indemnify and hold harmless the public employer.

(g) The leave provided under this section shall be in addition to any leave to which public employees may be entitled by other laws or by a memorandum of understanding or collective bargaining agreement.

(h) This section shall not serve to invalidate any provision of a memorandum of understanding or collective bargaining agreement in effect on the effective date of this section. At the request of the exclusive representative, a memorandum of understanding or collective bargaining agreement shall be reopened for negotiations to reach a mutual agreement concerning the grant of leave pursuant to this section.

(i) For purposes of this section:

(1) "Public employer" means, in addition to the entities described in subdivision (a) of Section 3555.5, both of the following:

(A) An employer subject to Chapter 10.4 (commencing with Section 3524.50).

(B) A public employer that employs public transit workers, the labor relations of which are regulated by provisions in the Public Utilities Code, and are not subject to the jurisdiction of the Public Employment Relations Board. Notwithstanding subdivision (c) of Section 3555.5, the Public Employment Relations Board shall not have jurisdiction to enforce this section with respect to such public transit workers.

(2) "Steward" means any employee designated by the exclusive representative as a representative for unit employees, whether for the unit as a whole or at a particular site, department, or other division of the employer's operations, regardless of whether the employee is referred to by the exclusive representative as a steward or by a different title.