

State of California

MEMORANDUM

To: PERSONNEL MANAGEMENT LIAISONS

Date: January 13, 1992

Reference Code: 92-06

**THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:**

Labor Relations Officers  
Personnel Officers

From: Department of Personnel Administration  
Office of the Director

Subject: AB 77 Family Leave Care

On October 1, 1991, Governor Wilson signed legislation (AB 77) on family care leave. Effective January 1, 1992, it will require that California employers provide employees with up to four months of unpaid family leave. Under the provisions of this new law, unpaid leave must be granted to care for a newborn or newly adopted child or a spouse, parent or child who is seriously ill. Employers subject to the legislation are required to guarantee that the employee may return to the same or equivalent position upon return from a family care leave.

Current law for State employees has and continues to have provisions for parental leave which permits either parent an unpaid leave of absence for up to one year to care for a newborn or adopted child. AB 77 does not add or change anything in this area.

Prior to AB 77, State appointing authorities were also permitted, but not mandated, to provide unpaid leaves of absence for any reasonable purpose, which could include care of a seriously ill family member. AB 77 makes a change in this area by giving the employee an entitlement of up to a total of four months of family care leave in a 24-month period unless the leave would be an undue hardship on the employer's operation. Beginning on January 1, 1992, State appointing powers will have to comply with this requirement in responding to employee requests for family care leave.

Leaves for family care can still exceed the four-month limit; however, the additional leave periods would be subject to the appointing power's discretion (as before) rather than AB 77. The State Controller's Office will be issuing special instructions on how to document leaves that have been granted under AB 77. This will allow appointing powers to determine when employees have exhausted their AB 77 leave rights.

AB 77 also specifies how an employee's benefits, seniority, retirement credits, etc., must be treated when they take leaves under this law. The Department of Personnel Administration has determined that the State's existing practices in this area meet AB 77 requirements. Therefore, no changes are needed in this area.



Specifically AB 77:

1. Entitles the employee taking leave to continue participating in health, pension, retirement or supplemental unemployment plans under the same conditions that apply to unpaid leave for any other purpose. What this means for State employees is that they can elect to make direct payments for health, dental, vision, and life and long-term disability insurance if they are currently enrolled. Employees covered by the Public Employees' Retirement System (PERS) may not continue retirement plan participation during the leave period since the terms of the PERS plan do not allow employees to make retirement contributions during a period of unpaid family leave;
2. Limits its entitlement to family care leave to employees with at least one year of continuous service with the employer;
3. Permits an employer to deny family care to prevent undue hardship to the employer's business operations;
4. Requires employees to provide reasonable notice to the employer (where possible) and to schedule the leave in a manner that causes the least disruption to the business;
5. Requires that employees taking a leave be permitted to use any accrued vacation leave or other accrued time off. Sick leave may not be used for family care leave unless the employer and employee agree; and
6. Prohibits employers from discharging or discriminating against any employee who wishes to take a family care leave, or who participates in any way in any enforcement proceeding regarding the rights of any person to family care leave.

If you have any questions regarding AB 77 or its provision, please call Peter Strom of the Policy Division Office at (916) 324-9368 or ATSS 454-9368.



Lillian Rowett  
Chief Deputy Director

