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March 14, 2017

Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
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Re: Case Name: School Employees: Sick Leave (16-TC-01)
Response to Department of Finance Comments
Claimant: Fresno Unified School District

Dear Ms. Halsey:

Fresno Unified School District ("Claimant") files the following written rebuttal in response to Department of Finance's ("DOF") comments.

A. Introduction

The claimant timely filed the test claim on December 21, 2016. The test claim alleges reimbursable costs mandated by the state for school districts to provide differential pay benefits of up to 12 weeks, if the employee is absent on account of maternity or paternity leave, pursuant to the requirements in Statutes 2015 Chapter 400, A.B. No 375. On January 17, 2017, the Commission found the filing to be complete.

DOF comments dated February 14, 2017, concur that the activities to develop and implement internal policies, training, procedures and forms to administer differential pay for certificated employees on maternity or paternity leave are state reimbursable costs.

B. Summary

The tests claim statute provides that when a school district employee in a position requiring certification qualifications is absent on account of maternity or paternity leave for a period of 12 weeks, the employee is entitled to receive the difference between his or her salary, and the sum that is paid a substitute employee employed to fill his or her position, during his or her absence. If no substitute employee is employed, the amount that would have been paid to the substitute, had he or she been employed, is paid to the person who is absent because of maternity or paternity leave.

The new legislation prohibits a certificated school employee on maternity or paternity leave, pursuant to the Moore–Brown–Roberti Family Rights Act, from being denied access to differential pay, while on that leave.

Test claim requirements provide an enhanced service to the public:

1. Maternity leave is essential, not only for a mother's full recovery from childbirth, but also to facilitate a stronger mother-child bond.

2. A child's ability to succeed in school and in life is impacted by the strength of the relationship with the primary caretaker. This relationship affects a child's future mental, physical, social, and emotional health. Additionally, this relationship is founded on the nonverbal emotional communication between child and parent, known as the attachment bond, which occurs naturally as a baby's needs are cared for. A secure attachment bond ensures that a child will feel secure, understood, and safe; this results in eagerness to learn, healthy self-awareness, trust, and empathy.

3. Overall, paid family leave helps keep people in the workforce after they have children. When more workers are able to take leave, they are more likely to choose to remain in the labor market; and paid parental leave is associated with higher employment in economies around the world. (AB 375; Assembly Third Reading-May 4, 2015)

4. Forcing teachers and other certificated employees to take entirely unpaid leave after only six or eight weeks of maternity leave, or none in the case of a new father, can lead to several issues for the employee, the school district, and society. Less parental leave has been positively correlated with lower cognitive test scores and higher rates of behavioral problems. A lack of proper postpartum support in the form of reasonable parental leave tends to lead to a delay in childhood immunizations, a decrease in the duration and likelihood of breastfeeding, increased financial hardship, and a higher chance of postpartum depression.

5. The author's office indicates that six or eight weeks is insufficient time for a new parent to care for and bond with their child. If a certificated employee wants to take off more time to spend with their newborn, then they must take unpaid leave. (Senate Rules Committee July 8, 2015)

Legal Analysis

C. Test claim requirements are unique to public service.

Procedures governing the constitutional requirement of reimbursement under Article XIII B, section 6, are set forth in Government Code section 17500, et seq. The Commission on State Mandates ("Commission") (Gov. Code, § 17525) is charged with the responsibility of hearing and deciding, subject to judicial review by an administrative writ of mandate, claims for reimbursement made by local governments or school districts. (Gov. Code, § 17551.)

Government Code section 17561, subdivision (a), provides that "The state shall reimburse each ... school district for all 'costs mandated by the state,' as defined in section 17514." Government Code section 17514, in turn, defines "costs mandated by the state" to mean, in relevant part, "any increased costs which a ... school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program, within the meaning of Section 6 of Article XIII B of the California Constitution." (*San Diego Unified Sch. Dist. v. Comm'n On State Mandates*, 33 Cal. 4th 859, 872 (2004).)

DOF[1] relies on *City of Anaheim v. State of California,* where the court affirmed a denial of a test claim based on costs incurred, as a result of reserve transfers in the Public Employees' Retirement System (PERS). The transfers reduced credits, which the city received for interest earned on deposits, resulting in a higher employer contribution rate. (*City of Anaheim v. State of California*, 189 Cal. App. 3d 1478 (1987). The Second District Court of Appeal, held that: (1) statute requiring PERS to increase pension payments to retired employees and funding the additional payments from excess amounts held in reserve deficiencies account did not compel city to do anything and any increase in costs, due to city's loss of interest on the excess funds, was only incidental to the statute, so that city was not entitled to reimbursement, and (2) pension payments to retired employees do not constitute a "program" or "service" for purposes of state constitutional provision requiring reimbursement to cities for costs of programs and services mandated by legislature. (City of Anaheim v. State of California, 189 Cal. App. 3d 1478, 1482 (1987).

The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state, since administrative activities and the payment for differential pay for public school teachers, due to maternity or paternity leaves, would constitute a "program."

> "....when the voters adopted Article XIII B, § 6, their intent was to require subvention for the expense or increased cost of programs administered locally, and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities." (City. of Los Angeles v. State of California, 43 Cal. 3d 46 (1987).)

The drafters and the electorate had in mind the commonly understood meanings of the term - programs that carry out the governmental function of providing services to the public, or

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[1] Finance's comments failed to comply with Cal. Code Regs., tit. 2 §§ 1183.2 and 1187.5 and shall be excluded from the Commission's ultimate findings and the record.

laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state (*Id.*)

DOF reliance on *County of Los Angeles* is misguided as the test claim was based on amended Labor Code provisions related to workers' compensation, a law that impacts public and private employers alike. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.) The court concluded "when the voters adopted Article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies." (*Id.*)

D. Previous Test Claim failed to require an increased level of service.

The *Differential Pay and Reemployment Test Claim* approved by the Commission on July 31, 2003, involved the amendment to the differential pay statute specifying that the five-month period runs *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave. The Commission determined there was no new program or higher level of service, within the meaning of Article XIII B, section 6, for any increased costs for the amount of differential pay compensation, when it is calculated consecutively, rather than concurrently, with accumulated sick leave, and that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The pending test claim in providing maternity and paternity leave, implements the state policy to benefit a child's future mental, physical, social, and emotional health in life impacted by the strength of the relationship with both of the child's parents. The test claim does not involve concurrent and consecutive sick leave that is limited to a change in calculating differential pay.

Conclusion

This test claim requires increased costs on school districts, and the payments constitute a "program" or "service" for purposes of state constitutional provision, requiring reimbursement to school districts for costs of providing maternity and paternity leave to public employees.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Arthur M. Palkowitz
Attorney for the Claimant

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

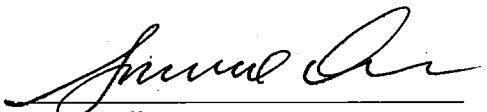
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 15, 2017, I served the:

Claimant Rebuttal Comments
School Employees: Sick Leave, 16-TC-01
Education Code Section 44977.5; Statutes 2015, Chapter 400 (AB 375)
Fresno Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 15, 2017 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/17

Claim Number: 16-TC-01

Matter: School Employees: Sick Leave

Claimant: Fresno Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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