

Assembly Bill No. 485

CHAPTER 242

An act to add Part 5 (commencing with Section 1500) to Division 2 of the Labor Code, relating to the Civil Air Patrol.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 485, Carter. Civil Air Patrol: California Wing: employment leave.

Existing federal law establishes the Civil Air Patrol as the civilian auxiliary of the United States Air Force. Existing state and federal law establish leave provisions for members of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States, and the National Guard.

This bill would require employers employing more than 15 employees to provide not less than 10 days per year of leave, beyond any leave benefits otherwise available to employees, to employees who have been employed by that employer for at least 90 days immediately preceding the commencement of leave, who are volunteer members of the California Wing of the Civil Air Patrol, and who have been duly directed and authorized by a political entity that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. The employee would be required to give the employer as much notice as possible of the intended dates upon which the leave would begin and end. The bill would require an employer, upon expiration of the Civil Air Patrol leave taken by an employee, to restore the employee to the position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the exercise of the leave rights by the employee. The bill would provide that an employer is not required to grant Civil Air Patrol leave to Civil Air Patrol employees who are required to respond as first responders or disaster service workers for a local, state, or federal agency to the same or a simultaneous emergency operational mission.

The bill would authorize an employee to bring a civil action in the superior court of the appropriate county to enforce the Civil Air Patrol leave rights. The court would be authorized to enjoin any act or practice that violates the Civil Air Patrol leave provisions and to order any equitable relief necessary and appropriate to redress the violation or to enforce the Civil Air Patrol leave rights.

The people of the State of California do enact as follows:

SECTION 1. Part 5 (commencing with Section 1500) is added to Division 2 of the Labor Code, to read:

PART 5. CIVIL AIR PATROL

1500. This part shall be known and may be cited as the Civil Air Patrol Employment Protection Act.

1501. In this part, the following terms have the following meanings:

(a) "Civil Air Patrol leave" means leave requested by an employee who is a volunteer member of the California Wing of the civilian auxiliary of the United States Air Force commonly known as the Civil Air Patrol and who has been duly directed and authorized by the United States Air Force, the California Emergency Management Agency, or other political subdivision of the State of California that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission, within or outside of the state, of the California Wing of the Civil Air Patrol.

(b) "Employee" means a person who may be permitted, required, or directed by an employer for wages or pay to engage in any employment and who has been employed by that employer for at least a 90-day period immediately preceding the commencement of leave, if otherwise eligible for leave.

(c) "Employee benefits" means all benefits, other than salary and wages, provided or made available to an employee by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

(d) "Employer" means any person, partnership, corporation, association, or other business entity; or the State of California, a municipality, or other unit of local government; that employs more than 15 employees.

1502. An employer shall not discriminate against or discharge from employment a member of the Civil Air Patrol because of such membership and shall not hinder or prevent a member from performing service as part of the California Wing of the Civil Air Patrol during an emergency operational mission of the California Wing of the Civil Air Patrol for which a member is entitled to leave under this part.

1503. (a) (1) An employer shall provide not less than 10 days per calendar year of unpaid Civil Air Patrol leave to an employee responding to an emergency operational mission of the California Wing of the Civil Air Patrol. Civil Air Patrol leave for a single emergency operational mission shall not exceed three days, unless an extension of time is granted by the governmental entity that authorized the emergency operational mission, and the extension of the leave is approved by the employer.

(2) Notwithstanding paragraph (1), an employer is not required to grant Civil Air Patrol leave to an employee who is required to respond to either the same or other simultaneous emergency operational mission as a first responder or disaster service worker for a local, state, or federal agency.

(b) (1) An employee shall give the employer as much notice as possible of the intended dates upon which the Civil Air Patrol leave will begin and end.

(2) An employer may require certification from the proper Civil Air Patrol authority to verify the eligibility of the employee for the leave requested or taken. The employer may deny the leave to be taken as Civil Air Patrol leave if the employee fails to provide the required certification.

(c) An employee taking leave under this part shall not be required to exhaust all accrued vacation leave, personal leave, compensatory leave, sick leave, disability leave, and any other leave that may be available to the employee in order to take Civil Air Patrol leave.

(d) Nothing in this act prevents an employer from providing paid leave for leave taken pursuant to this part.

1504. (a) An employer shall, upon expiration of a leave authorized by this part, restore an employee to the position held by him or her when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. An employer may decline to restore an employee as required in this subdivision because of conditions unrelated to the exercise of rights under this part by the employee.

(b) An employer and an employee may negotiate for the employer to maintain the benefits of the employee at the expense of the employer during the leave.

1505. (a) Taking Civil Air Patrol leave under this part shall not result in the loss of an employee benefit accrued before the date on which the leave began.

(b) This part does not affect the obligation of an employer to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this part.

(c) The rights provided under this part shall not be diminished by any collective bargaining agreement or employee benefit plan entered into on or after January 1, 2010.

(d) This part does not affect or diminish the contract rights or seniority status of an employee not entitled to Civil Air Patrol leave.

1506. (a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise a right established by this part.

(b) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against an employee who does any of the following:

(1) Exercises a right provided under this part.

(2) Opposes a practice made unlawful by this part.

1507. (a) An employee may bring a civil action in the superior court of the appropriate county to enforce this part.

(b) The court may enjoin any act or practice that violates this part and may order any equitable relief necessary and appropriate to redress the violation or to enforce this part.

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