

AMENDED IN ASSEMBLY MAY 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2340

Introduced by Assembly Member Monning

February 19, 2010

An act to add Section 230.5 to the Labor Code, relating to employee rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2340, as amended, Monning. Employee's right to bereavement leave.

Existing law provides employees with the right to take time off work without discharge or discrimination for a number of reasons.

This bill would add the right to inquire about, request, and take time off for bereavement leave. ~~For state employees, if this leave conflicts with a memorandum of understanding, the terms of the memorandum of understanding would be controlling.~~ *The provisions of the bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 230.5 is added to the Labor Code, to
- 2 read:
- 3 230.5. (a) An employer shall not discharge, discipline, or in
- 4 any manner discriminate against an employee for inquiring about,

1 requesting, or taking up to three days of bereavement leave off
2 upon the death of a spouse, child, parent, sibling, grandparent,
3 grandchild, or domestic partner.

4 (b) For purposes of this section, the following terms have the
5 following meanings:

6 ~~(1) “Child” has the same meaning as defined in paragraph (1)~~
7 ~~of subdivision (b) of Section 233.~~

8 (1) “Child” means a biological, adopted, or foster child, a
9 stepchild, a legal ward, a child of a domestic partner, or a child
10 of a person standing in loco parentis. This definition of a child is
11 applicable regardless of age or dependency status.

12 (2) “Employee” means a person employed by the employer for
13 at least 60 days prior to the commencement of the leave.

14 (3) “Parent” has the same meaning as defined in paragraph (3)
15 of subdivision (b) of Section 233.

16 (4) “Domestic partner” has the same meaning as defined in
17 Section 297 of the Family Code, who is registered pursuant to Part
18 2 (commencing with Section 298) of Division 2.5 of the Family
19 Code.

20 (5) “Sibling” means a person related to another person by blood,
21 adoption, or affinity through a common legal or biological parent.

22 (c) The days of bereavement leave need not be consecutive.

23 (d) The bereavement leave must be completed within 13 months
24 of the date of death of the person listed in subdivision (a).

25 (e) The bereavement leave is to be unpaid, except that an
26 employee may use vacation, personal leave, or compensatory time
27 off that is otherwise available to the employee.

28 (f) The employee, if requested by the employer, shall, within
29 30 days of the leave, provide documentation of the death of the
30 person listed in subdivision (a). “Documentation” includes a death
31 certificate, a published obituary, or written verification of death,
32 burial, or memorial services from a mortuary, funeral home, burial
33 society, crematorium, religious institution, or government agency.

34 (g) An employee who is discharged, disciplined, or otherwise
35 discriminated against in terms or conditions of employment by his
36 or her employer because the employee has inquired about,
37 requested, or taken bereavement leave pursuant to this section is
38 entitled to reinstatement and to recover actual damages.

1 (h) An employee who believes he or she has been discharged,
2 disciplined, or in any way discriminated against in violation of
3 this section may take either of the following actions:

4 (1) The employee may file a complaint with the Division of
5 Labor Standards Enforcement in accordance with Section 98.7.

6 (2) The employee may bring a civil action for the remedies
7 provided in subdivision (g) in a court of competent jurisdiction.
8 If the employee prevails, the court may award the employee
9 reasonable attorney's fees.

10 (i) The rights and remedies of this section are cumulative,
11 nonexclusive, and in addition to any other rights and remedies
12 afforded by contract or other provisions of law.

13 ~~(j) In any case where the provisions of this section are in conflict
14 with the provisions of a memorandum of understanding agreed to
15 pursuant to Section 3517.5 of the Government Code, the
16 memorandum of understanding shall be controlling without further
17 legislative action, except that if the provisions of the memorandum
18 of understanding require the expenditure of funds, those provisions
19 shall not become effective unless approved by the Legislature in
20 the annual Budget Act.~~

21 ~~(k) The Director of the Department of Personnel Administration
22 may establish bereavement leave requirements for civil service
23 employees of the state who are not state employees under
24 subdivision (c) of Section 3513 of the Government Code, and for
25 executive branch officers and employees who are not members of
26 the state civil service under Part 2 (commencing with Section
27 18500) of Division 5 of Title 2 of the Government Code.~~

28 *(j) This section does not apply to an employee covered by a
29 valid collective bargaining agreement if the agreement expressly
30 provides for bereavement leave and the wages, hours of work, and
31 working conditions of the employees, and if the agreement provides
32 premium wage rates for all overtime hours worked and a regular
33 hourly rate of pay for those employees of not less than 30 percent
34 more than the state minimum wage.*

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