

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE AUGUST 24, 2011

AMENDED IN SENATE AUGUST 16, 2011

AMENDED IN SENATE JULY 5, 2011

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 325

**Introduced by Assembly Member Bonnie Lowenthal
(Coauthor: Assembly Member Monning)**

February 10, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as amended, Bonnie Lowenthal. 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 prohibit an employer from refusing to grant a request by any employee to take up to 3 days of bereavement leave or to interfere with or restrain an employee from doing so. *This bill would authorize an employee who has been discharged, disciplined, or discriminated against for exercising his or her right to bereavement leave to bring a civil action against his or her employer for reinstatement, specified damages, and attorney's fees.* 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) It is unlawful employment practice for an employer
4 to refuse to grant a request by any employee to take up to three
5 days of bereavement leave upon the death of a spouse, child, parent,
6 sibling, grandparent, grandchild, or domestic partner.
7 (b) It is an unlawful employment practice for an employer to
8 interfere with or restrain the exercise or the attempted exercise of
9 the right of an employee to take leave pursuant to subdivision (a).
10 (c) For purposes of this section, the following terms have the
11 following meanings:
12 (1) “Child” means a biological, adopted, or foster child, a
13 stepchild, a legal ward, a child of a domestic partner, or a child of
14 a person standing in loco parentis. This definition of a child is
15 applicable regardless of age or dependency status.
16 (2) “Employee” means a person employed by the employer for
17 at least 60 days prior to the commencement of the leave.
18 (3) “Parent” has the same meaning as defined in paragraph (3)
19 of subdivision (b) of Section 233.
20 (4) “Domestic partner” has the same meaning as defined in
21 Section 297 of the Family Code, who is registered pursuant to Part
22 2 (commencing with Section 298) of Division 2.5 of the Family
23 Code.
24 (5) “Sibling” means a person related to another person by blood,
25 adoption, or affinity through a common legal or biological parent.
26 (d) The days of bereavement leave need not be consecutive.
27 (e) The bereavement leave must be completed within 3 months
28 of the date of death of the person listed in subdivision (a).
29 (f) The bereavement leave shall be taken pursuant to any existing
30 bereavement leave policy. If there is no existing bereavement leave
31 policy, the bereavement leave is to be unpaid, except that an

1 employee may use vacation, personal leave, or compensatory time
2 off that is otherwise available to the employee.

3 (g) The employee, if requested by the employer, shall, within
4 30 days of the first day of the leave, provide documentation of the
5 death of the person listed in subdivision (a). "Documentation"
6 includes a death certificate, a published obituary, or written
7 verification of death, burial, or memorial services from a mortuary,
8 funeral home, burial society, crematorium, religious institution,
9 or government agency.

10 (h) An employee who is discharged, disciplined, or otherwise
11 discriminated against in terms or conditions of employment by his
12 or her employer because the employee has exercised or attempted
13 to exercise his or her right to bereavement leave pursuant to this
14 section is entitled to reinstatement and to recover actual damages.

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

18 ~~(1)~~

19 (A) The employee may file a complaint with the Division of
20 Labor Standards Enforcement in accordance with Section 98.7.

21 ~~(2)~~

22 (B) The employee may bring a civil action for the remedies
23 provided in subdivision (h) *directly* in a court of competent
24 jurisdiction *without exhausting any administrative remedies*. ~~If the~~
25 ~~employee prevails, the court may award the employee reasonable~~
26 ~~attorney's fees.~~

27 (2) *In any action brought pursuant to this section, the court*
28 *may, in accordance with case law governing attorney's fees*
29 *awarded pursuant to subdivision (b) of Section 12965 of the*
30 *Government Code, award to the prevailing party reasonable*
31 *attorney's fees and costs, including expert witness fees, except*
32 *where the action is filed by a public agency or a public official,*
33 *acting in an official capacity.*

34 (j) The rights and remedies of this section are cumulative,
35 nonexclusive, and in addition to any other rights and remedies
36 afforded by contract or other provisions of law.

37 (k) This section does not apply to an employee covered by a
38 valid collective bargaining agreement if the agreement expressly
39 provides for bereavement leave and the wages, hours of work, and
40 working conditions of the employees, and if the agreement provides

- 1 premium wage rates for all overtime hours worked, where
- 2 applicable, and a regular hourly rate of pay for those employees
- 3 of not less than 30 percent more than the state minimum wage.

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