

**Introduced by Senator Jackson**February 20, 2013

---

---

An act to amend Sections 230 and 230.1 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 400, as introduced, Jackson. Employment protections: victims of domestic violence, sexual assault, or stalking.

(1) Existing law provides protections to victims of domestic violence and sexual assault and prohibits employers from taking adverse employment action against victims of domestic violence and sexual assault who take time off from work to attend to issues arising as a result of the domestic violence or sexual assault, as long as the employee complies with certain conditions. Existing law provides that employers who violate these provisions are guilty of a misdemeanor.

This bill would extend these protections to victims of stalking. The bill would also prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's known status as a victim of domestic violence, sexual assault, or stalking, and require the employer to provide reasonable accommodations for such a victim. The bill would create a private right of action for an aggrieved employee to seek enforcement of those victim status protection and reasonable accommodation provisions. Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 230 of the Labor Code is amended to  
2 read:

3 230. (a) An employer ~~may~~ *shall* not discharge or in any manner  
4 discriminate against an employee for taking time off to serve as  
5 required by law on an inquest jury or trial jury, if the employee,  
6 prior to taking the time off, gives reasonable notice to the employer  
7 that he or she is required to serve.

8 (b) An employer ~~may~~ *shall* not discharge or in any manner  
9 discriminate or retaliate against an employee, including, but not  
10 limited to, an employee who is a victim of a crime, for taking time  
11 off to appear in court to comply with a subpoena or other court  
12 order as a witness in any judicial proceeding.

13 (c) An employer ~~may~~ *shall* not discharge or in any manner  
14 discriminate or retaliate against an employee who is a victim of  
15 domestic violence ~~or a victim of~~, sexual assault, *or stalking* for  
16 taking time off from work to obtain or attempt to obtain any relief,  
17 including, but not limited to, a temporary restraining order,  
18 restraining order, or other injunctive relief, to help ensure the  
19 health, safety, or welfare of the victim or his or her child.

20 (d) (1) As a condition of taking time off for a purpose set forth  
21 in subdivision (c), the employee shall give the employer reasonable  
22 advance notice of the employee's intention to take time off, unless  
23 the advance notice is not feasible.

24 (2) When an unscheduled absence occurs, the employer shall  
25 not take any action against the employee if the employee, within  
26 a reasonable time after the absence, provides a certification to the  
27 employer. Certification shall be sufficient in the form of any of  
28 the following:

29 (A) A police report indicating that the employee was a victim  
30 of domestic violence ~~or~~, sexual assault, *or stalking*.

31 (B) A court order protecting or separating the employee from  
32 the perpetrator of an act of domestic violence ~~or~~, sexual assault,

1 *or stalking*, or other evidence from the court or prosecuting attorney  
2 that the employee has appeared in court.

3 (C) Documentation from a medical professional, domestic  
4 violence advocate or advocate for victims of sexual assault, health  
5 care provider, or counselor that the employee was undergoing  
6 treatment for physical or mental injuries or abuse resulting in  
7 victimization from an act of domestic violence~~or~~, sexual assault,  
8 *or stalking*.

9 (3) To the extent allowed by law *and consistent with*  
10 *subparagraph (D) of paragraph (7) of subdivision (f)*, the employer  
11 shall maintain the confidentiality of any employee requesting leave  
12 under subdivision (c).

13 (e) *An employer shall not discharge or in any manner*  
14 *discriminate or retaliate against an employee because of the*  
15 *employee's known status as a victim of domestic violence, sexual*  
16 *assault, or stalking.*

17 (f) (1) *An employer shall provide reasonable accommodations*  
18 *for a victim of domestic violence, sexual assault, or stalking who*  
19 *requests an accommodation for the safety of the victim while at*  
20 *work.*

21 (2) *For purposes of this subdivision, reasonable*  
22 *accommodations may include the implementation of safety*  
23 *measures, including a transfer, reassignment, modified schedule,*  
24 *changed work telephone, changed work station, installed lock,*  
25 *assistance in documenting domestic violence, sexual assault, or*  
26 *stalking that occurs in the workplace, an implemented safety*  
27 *procedure, or another adjustment to a job structure, workplace*  
28 *facility, or work requirement in response to domestic violence,*  
29 *sexual assault, or stalking, or referral to a victim assistance*  
30 *organization.*

31 (3) *An employer is not required to provide a reasonable*  
32 *accommodation to an employee who has not disclosed his or her*  
33 *status as a victim of domestic violence, sexual assault, or stalking.*

34 (4) *The employer shall make reasonable accommodations in a*  
35 *timely fashion.*

36 (5) *In determining whether the accommodation is reasonable,*  
37 *the employer shall consider an exigent circumstance or danger*  
38 *facing the employee.*

39 (6) *This subdivision does not require the employer to undertake*  
40 *an action that constitutes an undue hardship on the employer's*

1 *business operations, as defined by Section 12926 of the*  
2 *Government Code.*

3 *(7) (A) Upon the request of an employer, an employee*  
4 *requesting a reasonable accommodation pursuant to this*  
5 *subdivision shall provide the employer a written statement signed*  
6 *by the employee or an individual acting on the employee's behalf,*  
7 *certifying that the accommodation is for a purpose authorized*  
8 *under this subdivision.*

9 *(B) The employer may also request certification from an*  
10 *employee requesting an accommodation pursuant to this*  
11 *subdivision demonstrating the employee's status as a victim of*  
12 *domestic violence, sexual assault, or stalking. Certification shall*  
13 *be sufficient in the form of any of the categories described in*  
14 *paragraph (2) of subdivision (d).*

15 *(C) An employer who requests certification pursuant to*  
16 *subparagraph (B) may request recertification of an employee's*  
17 *status as a victim of domestic violence, sexual assault, or stalking*  
18 *every six months after the date of the previous certification.*

19 *(D) Any verbal or written statement, police or court record, or*  
20 *other documentation provided to an employer identifying an*  
21 *employee as a victim of domestic violence, sexual assault, or*  
22 *stalking shall be maintained as confidential by the employer and*  
23 *shall not be disclosed by the employer except as required by federal*  
24 *or state law or as necessary to protect the employee's safety in the*  
25 *workplace. The employee shall be given notice before any*  
26 *authorized disclosure.*

27 *(8) An employer shall not retaliate against a victim of domestic*  
28 *violence, sexual assault, or stalking for requesting a reasonable*  
29 *accommodation, regardless of whether the request was granted.*

30 ~~*(e) Any*~~

31 *(g) (1) An employee who is discharged, threatened with*  
32 *discharge, demoted, suspended, or in any other manner*  
33 *discriminated or retaliated against in the terms and conditions of*  
34 *employment by his or her employer because the employee has*  
35 *taken time off for a purpose set forth in subdivision (a); or (b); or*  
36 ~~*(e)*~~ *shall be entitled to reinstatement and reimbursement for lost*  
37 *wages and work benefits caused by the acts of the employer. Any*

38 *(2) An employee who is discharged, threatened with discharge,*  
39 *demoted, suspended, or in any other manner discriminated or*  
40 *retaliated against in the terms and conditions of employment by*

1 *his or her employer for reasons prohibited in subdivision (c) or*  
 2 *(e), or because he or she has requested or received a reasonable*  
 3 *accommodation as set forth in subdivision (f), is entitled to*  
 4 *reinstatement and reimbursement for lost wages and work benefits*  
 5 *caused by the acts of the employer, as well as appropriate equitable*  
 6 *relief. If the employee prevails in an action pursuant to this*  
 7 *paragraph, the court may award reasonable attorney’s fees and*  
 8 *costs.*

9 (3) An employer who willfully refuses to rehire, promote, or  
 10 otherwise restore an employee or former employee who has been  
 11 determined to be eligible for rehiring or promotion by a grievance  
 12 procedure or hearing authorized by law is guilty of a misdemeanor.

13 ~~(f)~~

14 (h) (1) ~~Any~~ An employee who is discharged, threatened with  
 15 discharge, demoted, suspended, or in any other manner  
 16 discriminated or retaliated against in the terms and conditions of  
 17 employment by his or her employer because the employee has  
 18 exercised his or her rights as set forth in subdivision (a), (b), or  
 19 (c) may file a complaint with the Division of Labor Standards  
 20 Enforcement of the Department of Industrial Relations pursuant  
 21 to Section 98.7.

22 (2) Notwithstanding any time limitation in Section 98.7, an  
 23 employee ~~file~~ *may file* a complaint with the division based upon  
 24 a violation of subdivision (c) ~~shall have~~ *within* one year from the  
 25 date of occurrence of the violation ~~to file his or her complaint.~~

26 (i) *An employee who is discharged, threatened with discharge,*  
 27 *demoted, suspended, or denied a reasonable accommodation under*  
 28 *subdivision (e) or (f) may bring a civil action in the superior court*  
 29 *of the appropriate county to enforce those provisions.*

30 ~~(g)~~

31 (j) An employee may use vacation, personal leave, or  
 32 compensatory time off that is otherwise available to the employee  
 33 under the applicable terms of employment, unless otherwise  
 34 provided by a collective bargaining agreement, for time taken off  
 35 for a purpose specified in subdivision (a), (b), or (c). The  
 36 entitlement of any employee under this section shall not be  
 37 diminished by any collective bargaining agreement term or  
 38 condition.

39 ~~(h)~~

40 (k) For purposes of this section:

1 (1) “Domestic violence” means any of the types of abuse set  
 2 forth in Section 6211 of the Family Code, as amended.

3 (2) “Sexual assault” means any of the crimes set forth in Section  
 4 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
 5 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
 6 as amended.

7 (3) “*Stalking*” means a crime set forth in Section 646.9 of the  
 8 Penal Code or Section 1708.7 of the Civil Code.

9 SEC. 2. Section 230.1 of the Labor Code is amended to read:

10 230.1. (a) In addition to the requirements and prohibitions  
 11 imposed on employees pursuant to Section 230, an employer with  
 12 25 or more employees ~~may~~ shall not discharge or in any manner  
 13 discriminate or retaliate against an employee who is a victim of  
 14 domestic violence ~~or a victim of~~, sexual assault, *or stalking* for  
 15 taking time off from work to attend to any of the following:

16 (1) To seek medical attention for injuries caused by domestic  
 17 violence ~~or~~, sexual assault, *or stalking*.

18 (2) To obtain services from a domestic violence shelter,  
 19 program, or rape crisis center as a result of domestic violence ~~or~~,  
 20 sexual assault, *or stalking*.

21 (3) To obtain psychological counseling related to an experience  
 22 of domestic violence ~~or~~, sexual assault, *or stalking*.

23 (4) To participate in safety planning and take other actions to  
 24 increase safety from future domestic violence ~~or~~, sexual assault,  
 25 *or stalking*, including temporary or permanent relocation.

26 (b) (1) As a condition of taking time off for a purpose set forth  
 27 in subdivision (a), the employee shall give the employer reasonable  
 28 advance notice of the employee’s intention to take time off, unless  
 29 the advance notice is not feasible.

30 (2) When an unscheduled absence occurs, the employer ~~may~~  
 31 shall not take any action against the employee if the employee,  
 32 within a reasonable time after the absence, provides a certification  
 33 to the employer. Certification shall be sufficient in the form of any  
 34 of the ~~following~~ categories described in paragraph (2) of  
 35 subdivision (d) of Section 230.

36 (A) ~~A police report indicating that the employee was a victim~~  
 37 ~~of domestic violence or sexual assault.~~

38 (B) ~~A court order protecting or separating the employee from~~  
 39 ~~the perpetrator of an act of domestic violence or sexual assault, or~~

1 ~~other evidence from the court or prosecuting attorney that the~~  
2 ~~employee appeared in court.~~

3 ~~(C) Documentation from a medical professional, domestic~~  
4 ~~violence advocate or advocate for victims of sexual assault, health~~  
5 ~~care provider, or counselor that the employee was undergoing~~  
6 ~~treatment for physical or mental injuries or abuse resulting in~~  
7 ~~victimization from an act of domestic violence or sexual assault.~~

8 (3) To the extent allowed by law *and consistent with*  
9 *subparagraph (D) of paragraph (7) of subdivision (f) of Section*  
10 *230*, employers shall maintain the confidentiality of any employee  
11 requesting leave under subdivision (a).

12 (c) ~~Any~~An employee who is discharged, threatened with  
13 discharge, demoted, suspended, or in any other manner  
14 discriminated or retaliated against in the terms and conditions of  
15 employment by his or her employer because the employee has  
16 taken time off for a purpose set forth in subdivision (a) is entitled  
17 to reinstatement and reimbursement for lost wages and work  
18 benefits caused by the acts of the employer, *as well as appropriate*  
19 *equitable relief*. ~~Any~~ An employer who willfully refuses to rehire,  
20 promote, or otherwise restore an employee or former employee  
21 who has been determined to be eligible for rehiring or promotion  
22 by a grievance procedure or hearing authorized by law is guilty of  
23 a misdemeanor.

24 (d) (1) ~~Any~~An employee who is discharged, threatened with  
25 discharge, demoted, suspended, or in any other manner  
26 discriminated or retaliated against in the terms and conditions of  
27 employment by his or her employer because the employee has  
28 exercised his or her rights as set forth in subdivision (a) may file  
29 a complaint with the Division of Labor Standards Enforcement of  
30 the Department of Industrial Relations pursuant to Section 98.7.

31 (2) Notwithstanding any time limitation in Section 98.7, an  
32 employee ~~file~~ *may file* a complaint with the division based upon  
33 a violation of subdivision (a) ~~has~~ *within* one year from the date of  
34 occurrence of the violation ~~to file his or her complaint~~.

35 (e) *If an employee prevails in an action pursuant to this section,*  
36 *the court may award reasonable attorney's fees and costs.*

37 (e)

38 (f) An employee may use vacation, personal leave, or  
39 compensatory time off that is otherwise available to the employee  
40 under the applicable terms of employment, unless otherwise

1 provided by a collective bargaining agreement, for time taken off  
2 for a purpose specified in subdivision (a). The entitlement of any  
3 employee under this section ~~may~~ shall not be diminished by any  
4 collective bargaining agreement term or condition.

5 (f)

6 (g) This section does not create a right for an employee to take  
7 unpaid leave that exceeds the unpaid leave time allowed under, or  
8 is in addition to the unpaid leave time permitted by, the federal  
9 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et  
10 seq.).

11 (g)

12 (h) For purposes of this section:

13 (1) “Domestic violence” means any of the types of abuse set  
14 forth in Section 6211 of the Family Code, as amended.

15 (2) “Sexual assault” means any of the crimes set forth in Section  
16 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
17 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
18 as amended.

19 (3) “Stalking” means a crime set forth in Section 646.9 of the  
20 Penal Code or Section 1708.7 of the Civil Code.

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.