

AMENDED IN ASSEMBLY APRIL 20, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2337

Introduced by Assembly Member Burke

February 18, 2016

An act to amend Section 230.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as amended, Burke. Employment protections: victims of domestic violence, sexual assault, or stalking.

Existing law prohibits an employer with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for specified purposes related to addressing the domestic violence, sexual assault, or stalking. Existing law provides that any employee who is discharged, threatened with discharge, demoted, suspended, or in any manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for those purposes is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief, and is allowed to file a complaint with the Division of Labor Standards Enforcement of *within* the Department of Industrial Relations. *Existing law establishes the Labor Commissioner as the head of the Division of Labor Standards Enforcement.*

This bill would require employers to inform each employee of his or her rights established under those laws by providing that information in writing to new employees upon hire and to other employees upon request. *The bill would also require the Labor Commissioner to develop a form that employers could use to comply with these provisions and to post it on the commissioner's Internet Web site.*

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 230.1 of the Labor Code is amended to
2 read:

3 230.1. (a) In addition to the requirements and prohibitions
4 imposed on employees pursuant to Section 230, an employer with
5 25 or more employees shall not discharge, or in any manner
6 discriminate or retaliate against, an employee who is a victim of
7 domestic violence, sexual assault, or stalking for taking time off
8 from work for any of the following purposes:

9 (1) To seek medical attention for injuries caused by domestic
10 violence, sexual assault, or stalking.

11 (2) To obtain services from a domestic violence shelter,
12 program, or rape crisis center as a result of domestic violence,
13 sexual assault, or stalking.

14 (3) To obtain psychological counseling related to an experience
15 of domestic violence, sexual assault, or stalking.

16 (4) To participate in safety planning and take other actions to
17 increase safety from future domestic violence, sexual assault, or
18 stalking, including temporary or permanent relocation.

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

23 (2) When an unscheduled absence occurs, the employer shall
24 not take any action against the employee if the employee, within
25 a reasonable time after the absence, provides a certification to the
26 employer. Certification shall be sufficient in the form of any of
27 the categories described in paragraph (2) of subdivision (d) of
28 Section 230.

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

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

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

23 (2) Notwithstanding any time limitation in Section 98.7, an
24 employee may file a complaint with the division based upon a
25 violation of subdivision (a) within one year from the date of
26 occurrence of the violation.

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

34 (f) This section does not create a right for an employee to take
35 unpaid leave that exceeds the unpaid leave time allowed under, or
36 is in addition to the unpaid leave time permitted by, the federal
37 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et
38 seq.).

39 (g) 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 (h) (1) Employers shall inform each employee of his or her
10 rights established under this section by providing that information
11 in writing to new employees upon hire and to other employees
12 upon request.

13 (2) *The Labor Commissioner shall develop a form that an*
14 *employer may use to comply with the notice requirements in*
15 *paragraph (1). The form shall set forth the rights and duties of*
16 *employers and employees under this section in clear and concise*
17 *language. The Labor Commissioner shall post this form on the*
18 *commissioner’s Internet Web site to make it available to employers*
19 *who are required to comply with this section. If an employer elects*
20 *not to use the form developed by the Labor Commissioner, the*
21 *notice provided by the employer to the employees shall be*
22 *substantially similar in content and clarity to the form developed*
23 *by the Labor Commissioner.*