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Introduced by Senator Romero

February 22, 2005

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An act to amend Section 230 of the Labor Code, relating to workplace protections.

LEGISLATIVE COUNSEL'S DIGEST

SB 874, as introduced, Romero. Workplace protections.

Existing law prohibits an employer from taking adverse employment action against an employee who takes time off from work to attend to specified issues, including to serve on a jury, as long as the employee complies with certain conditions.

This bill would make a technical, nonsubstantive change to that law.

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

*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 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 *on a* trial jury, if the  
6 employee, prior to taking the time off, gives reasonable notice to  
7 the employer that he or she is required to serve.

8 (b) An employer may 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  
11 time off to appear in court to comply with a subpoena or other  
12 court order as a witness in any judicial proceeding.

1 (c) An employer may not discharge or in any manner  
2 discriminate or retaliate against an employee who is a victim of  
3 domestic violence or a victim of sexual assault for taking time off  
4 from work to obtain or attempt to obtain any relief, including, but  
5 not limited to, a temporary restraining order, restraining order, or  
6 other injunctive relief, to help ensure the health, safety, or  
7 welfare of the victim or his or her child.

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

12 (2) When an unscheduled absence occurs, the employer shall  
13 not take any action against the employee if the employee, within  
14 a reasonable time after the absence, provides a certification to the  
15 employer. Certification shall be sufficient in the form of any of  
16 the following:

17 (A) A police report indicating that the employee was a victim  
18 of domestic violence or sexual assault.

19 (B) A court order protecting or separating the employee from  
20 the perpetrator of an act of domestic violence or sexual assault,  
21 or other evidence from the court or prosecuting attorney that the  
22 employee has appeared in court.

23 (C) Documentation from a medical professional, domestic  
24 violence advocate or advocate for victims of sexual assault,  
25 health care provider, or counselor that the employee was  
26 undergoing treatment for physical or mental injuries or abuse  
27 resulting in victimization from an act of domestic violence or  
28 sexual assault.

29 (3) To the extent allowed by law, the employer shall maintain  
30 the confidentiality of any employee requesting leave under  
31 subdivision (c).

32 (e) Any employee who is discharged, threatened with  
33 discharge, demoted, suspended, or in any other manner  
34 discriminated or retaliated against in the terms and conditions of  
35 employment by his or her employer because the employee has  
36 taken time off for a purpose set forth in subdivision (a), (b), or (c)  
37 shall be entitled to reinstatement and reimbursement for lost  
38 wages and work benefits caused by the acts of the employer. Any  
39 employer who willfully refuses to rehire, promote, or otherwise  
40 restore an employee or former employee who has been

1 determined to be eligible for rehiring or promotion by a  
2 grievance procedure or hearing authorized by law is guilty of a  
3 misdemeanor.

4 (f) (1) Any employee who is discharged, threatened with  
5 discharge, demoted, suspended, or in any other manner  
6 discriminated or retaliated against in the terms and conditions of  
7 employment by his or her employer because the employee has  
8 exercised his or her rights as set forth in subdivision (a), (b), or  
9 (c) may file a complaint with the Division of Labor Standards  
10 Enforcement of the Department of Industrial Relations pursuant  
11 to Section 98.7.

12 (2) Notwithstanding any time limitation in Section 98.7, an  
13 employee filing a complaint with the division based upon a  
14 violation of subdivision (c) shall have one year from the date of  
15 occurrence of the violation to file his or her complaint.

16 (g) An employee may use vacation, personal leave, or  
17 compensatory time off that is otherwise available to the  
18 employee under the applicable terms of employment, unless  
19 otherwise provided by a collective bargaining agreement, for  
20 time taken off for a purpose specified in subdivision (a), (b), or  
21 (c). The entitlement of any employee under this section shall not  
22 be diminished by any collective bargaining agreement term or  
23 condition.

24 (h) For purposes of this section:

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

27 (2) “Sexual assault” means any of the crimes set forth in  
28 Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j,  
29 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the  
30 Penal Code, as amended.