

AMENDED IN SENATE JULY 14, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 485

Introduced by Assembly Member Carter

February 24, 2009

An act to add Part 5 (commencing with Section 1500) to Division 2 of the Labor Code, relating to the Civil Air Patrol.

LEGISLATIVE COUNSEL'S DIGEST

AB 485, as amended, Carter. Civil Air Patrol: California Wing: employment leave.

Existing federal law establishes the Civil Air Patrol as the civilian auxiliary of the United States Air Force. Existing state and federal law establish leave provisions for members of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States, and the National Guard.

This bill would require employers employing more than 15 employees to provide not less than 10 days per year of leave, beyond any leave benefits otherwise available to employees, to employees who have been employed by that employer for at least 90 days immediately preceding the commencement of leave, who are volunteer members of the California Wing of the Civil Air Patrol, and who have been duly directed and authorized by a political entity that has the authority to authorize an emergency operational mission of the California Wing of the Civil Air Patrol, to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. The employee would be required to give the employer as much notice as possible of the intended dates

upon which the leave would begin and end. The bill would require an employer, upon expiration of the Civil Air Patrol leave taken by an employee, to restore the employee to the position he or she held when the leave began or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment, unless the employee is not restored because of conditions unrelated to the exercise of the leave rights by the employee. *The bill would exempt from the Civil Air Patrol leave employees who are required to respond as first responders to the emergency operational mission.*

The bill would authorize an employee to bring a civil action in the ~~state court of appeal~~ *superior court of the appropriate jurisdiction county* to enforce the Civil Air Patrol leave rights. The court would be authorized to enjoin any act or practice that violates the Civil Air Patrol leave provisions and to order any equitable relief necessary and appropriate to redress the violation or to enforce the Civil Air Patrol leave rights.

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. Part 5 (commencing with Section 1500) is added
2 to Division 2 of the Labor Code, to read:

3

4 PART 5. CIVIL AIR PATROL

5

6 1500. This part shall be known and may be cited as the Civil
7 Air Patrol Employment Protection Act.

8 1501. In this part, the following terms have the following
9 meanings:

10 (a) "Civil Air Patrol leave" means leave requested by an
11 employee who is a volunteer member of the *California Wing of*
12 *the* civilian auxiliary of the United States Air Force commonly
13 known as the Civil Air Patrol and who has been duly directed and
14 authorized by the United States Air Force, the California
15 Emergency Management Agency, or other political subdivision
16 of the State of California that has the authority to authorize an
17 emergency operational mission of the California Wing of the Civil
18 Air Patrol, to respond to an emergency operational mission, *within*

1 or outside of the state, of the California Wing of the Civil Air
2 Patrol.

3 (b) "Employee" means a person who may be permitted, required,
4 or directed by an employer for wages or pay to engage in any
5 employment and who has been employed by that employer for at
6 least a 90-day period immediately preceding the commencement
7 of leave, if otherwise eligible for leave.

8 (c) "Employee benefits" means all benefits, other than salary
9 and wages, provided or made available to an employee by an
10 employer and includes group life insurance, health insurance,
11 disability insurance, and pensions, regardless of whether benefits
12 are provided by a policy or practice of an employer.

13 (d) "Employer" means any person, partnership, corporation,
14 association, or other business entity; or the State of California, a
15 municipality, or other unit of local government; that employs more
16 than 15 employees.

17 1502. An employer shall not discriminate against or discharge
18 from employment a member of the Civil Air Patrol because of
19 such membership and shall not hinder or prevent a member from
20 performing service as part of the California Wing of the Civil Air
21 Patrol during an emergency operational mission of the California
22 Wing of the Civil Air Patrol for which a member is entitled to
23 leave under this part.

24 1503. (a) (1) An employer shall provide not less than ~~15~~ 10
25 days per calendar year of unpaid Civil Air Patrol leave to an
26 employee responding to an emergency operational mission of the
27 California Wing of the Civil Air Patrol. *Civil Air Patrol leave for*
28 *a single emergency operational mission shall not exceed three*
29 *days, unless an extension of time is granted by the governmental*
30 *entity that authorized the emergency operational mission, and the*
31 *extension of the leave is approved by the employer.*

32 (2) *Notwithstanding paragraph (1), an employer shall not grant*
33 *Civil Air Patrol leave to an employee who is required to respond*
34 *to the emergency operational mission as a first responder for a*
35 *local, state, or federal agency.*

36 (b) (1) An employee shall give the employer as much notice
37 as possible of the intended dates upon which the Civil Air Patrol
38 leave will begin and end.

39 (2) An employer may require certification from the proper Civil
40 Air Patrol authority to verify the eligibility of the employee for

1 the leave requested or taken. The employer may deny the leave to
2 be taken as Civil Air Patrol leave if the employee fails to provide
3 the required certification.

4 (c) An employee taking leave under this part shall not be
5 required to exhaust all accrued vacation leave, personal leave,
6 compensatory leave, sick leave, disability leave, and any other
7 leave that may be available to the employee in order to take Civil
8 Air Patrol leave.

9 (d) Nothing in this act prevents an employer from providing
10 paid leave for leave taken pursuant to this part.

11 1504. (a) An employer shall, upon expiration of a leave
12 authorized by this part, restore an employee to the position held
13 by him or her when the leave began or to a position with equivalent
14 seniority status, employee benefits, pay, and other terms and
15 conditions of employment. An employer may decline to restore
16 an employee as required in this subdivision because of conditions
17 unrelated to the exercise of rights under this part by the employee.

18 (b) An employer and an employee may negotiate for the
19 employer to maintain the benefits of the employee at the expense
20 of the employer during the leave.

21 1505. (a) Taking Civil Air Patrol leave under this part shall
22 not result in the loss of an employee benefit accrued before the
23 date on which the leave began.

24 (b) This part does not affect the obligation of an employer to
25 comply with any collective bargaining agreement or employee
26 benefit plan that provides greater leave rights to employees than
27 the rights provided under this part.

28 (c) The rights provided under this part shall not be diminished
29 by any collective bargaining agreement or employee benefit plan
30 entered into on or after January 1, 2010.

31 (d) This part does not affect or diminish the contract rights or
32 seniority status of an employee not entitled to Civil Air Patrol
33 leave.

34 1506. (a) An employer shall not interfere with, restrain, or
35 deny the exercise or the attempt to exercise a right established by
36 this part.

37 (b) An employer shall not discharge, fine, suspend, expel,
38 discipline, or in any other manner discriminate against an employee
39 who does any of the following:

40 (1) Exercises a right provided under this part.

- 1 (2) Opposes a practice made unlawful by this part.
2 1507. (a) An employee may bring a civil action in the state
3 ~~court of appeal of~~ *superior court of the* appropriate jurisdiction
4 ~~county~~ to enforce this part.
5 (b) The court may enjoin any act or practice that violates this
6 part and may order any equitable relief necessary and appropriate
7 to redress the violation or to enforce this part.

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