

AMENDED IN SENATE AUGUST 14, 2013  
AMENDED IN ASSEMBLY APRIL 1, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 855**

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**Introduced by Assembly Member Brown**

February 21, 2013

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An act to amend Section 19996.2 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 855, as amended, Brown. State employees: absence without leave: reinstatement.

The State Civil Service Act provides that absence without leave for 5 consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked. The act provides a procedure for a permanent or probationary state employee to seek reinstatement and for the Department of Human Resources to grant reinstatement. Reinstatement may be granted if (1) the employee makes a satisfactory explanation to the department as to the cause of his or her absence and his or her failure to obtain leave, and (2) the department finds that the employee is ready, able, and willing to resume the discharge of the duties of his or her position or has obtained consent for a leave of absence.

This bill would ~~provide that~~ *permit* an employee ~~may to~~ demonstrate that he or she is ready, able, and willing to resume the discharge of the duties of his or her position by submitting written verification from a

licensed health care provider that shows the employee is released to return to work. ~~The~~

*This bill would require the department to grant reinstatement if the hiring authority ~~invokes these provisions~~ separates an employee from state service pursuant to those provisions before the ~~employee is absent without leave for 5 consecutive work days~~ expiration of the 5th working day.*

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 19996.2 of the Government Code is  
2 amended to read:

3 19996.2. (a) Absence without leave, whether voluntary or  
4 involuntary, for five consecutive working days is an automatic  
5 resignation from state service, as of the last date on which the  
6 employee worked.

7 *(b) The department shall grant reinstatement if the hiring  
8 authority, in violation of paragraph (a), separates an employee  
9 for absence without leave pursuant to this section prior to the  
10 expiration of the fifth working day. However, nothing in this  
11 paragraph limits the hiring authority's right to otherwise dismiss  
12 or discipline an employee.*

13 ~~(b)~~

14 (c) (1) A permanent or probationary employee may, within 90  
15 days of the effective date of a separation described in subdivision  
16 (a), file a written request with the department for reinstatement.  
17 However, if the appointing power has notified the employee of his  
18 or her automatic resignation, any request for reinstatement shall  
19 be made in writing and filed within 15 days of the service of notice  
20 of separation. Service of notice shall be made as provided in  
21 Section 18575 and is complete on mailing. Reinstatement may be  
22 granted if both of the following apply:

23 (A) The employee makes a satisfactory explanation to the  
24 department as to the cause of his or her absence and his or her  
25 failure to obtain leave.

26 (B) The department finds that the employee is ready, able, and  
27 willing to resume the discharge of the duties of his or her position  
28 or, if not, that he or she has obtained the consent of his or her

1 appointing power to a leave of absence to commence upon  
2 reinstatement.

3 (2) An employee may demonstrate to the department that he or  
4 she is ready, able, and willing to resume the discharge of the duties  
5 of his or her position by submitting written verification from a  
6 licensed health care provider that shows the employee is released  
7 to return to work. However, nothing in this section waives the right  
8 of the hiring authority to challenge the validity or accuracy of the  
9 medical verification during any proceedings before the department.

10 ~~(3) The department shall grant reinstatement if the hiring~~  
11 ~~authority invokes this section before the employee is absent without~~  
12 ~~leave for five consecutive work days. However, nothing in this~~  
13 ~~provision limits the hiring authority's right to otherwise terminate~~  
14 ~~an employee.~~

15 ~~(4)~~

16 (3) Except as provided in subdivision ~~(e)~~, (d), an employee  
17 reinstated pursuant to this section shall not be paid salary for the  
18 period of his or her absence or separation, or for any portion  
19 thereof.

20 ~~(e)~~

21 (d) If this section is in conflict with a memorandum of  
22 understanding reached pursuant to Section 3517.5, the  
23 memorandum of understanding shall be controlling without further  
24 legislative action. However, if the memorandum of understanding  
25 requires the expenditure of funds, the memorandum of  
26 understanding shall not become effective unless approved by the  
27 Legislature in the annual Budget Act.