

AMENDED IN ASSEMBLY AUGUST 30, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 288

Introduced by Senator Lieu

February 14, 2013

An act to ~~amend Section 230 of~~ *add Section 230.5 to* the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 288, as amended, Lieu. Employment protections: time off.

Existing law prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to serve on a jury, an employee who is a victim of a crime for taking time off to appear in court as a witness in any judicial proceeding, or an employee who is a victim of domestic violence or a victim of sexual assault for taking time off from work to obtain or attempt to obtain prescribed relief. ~~A violation of these provisions, under certain circumstances, is a misdemeanor.~~

Existing law entitles an employee who is discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for specified purposes to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Under existing law, an employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor. Existing law authorizes an employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated or retaliated against by his or

her employer in violation of these provisions to file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations, as specified.

This bill would additionally prohibit an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim, as defined, of specified offenses, as defined, for taking time off from work, upon the victim's request, to appear in court to be heard at any proceeding, including any delinquency proceeding, involving a postarrest release decision, plea, sentencing, postconviction release decision, or any proceeding in which a right of the victim is at issue. *The bill would also extend those aforementioned protections, including, but not limited to, reinstatement and reimbursement, to an employee who is a victim of specified offenses for taking time off from work to appear at a court proceeding, as specified.* Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.

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 230.5 is added to the Labor Code, to read:*
 2 *230.5. (a) (1) An employer shall not discharge or in any*
 3 *manner discriminate or retaliate against an employee who is a*
 4 *victim of an offense listed in paragraph (2) for taking time off from*
 5 *work, upon the victim's request, to appear in court to be heard at*
 6 *any proceeding, including any delinquency proceeding, involving*
 7 *a postarrest release decision, plea, sentencing, postconviction*
 8 *release decision, or any proceeding in which a right of the victim*
 9 *is at issue.*
 10 *(2) The offenses include all of the following:*
 11 *(A) Vehicular manslaughter while intoxicated, as defined in*
 12 *subdivision (b) of Section 191.5 of the Penal Code.*
 13 *(B) Felony child abuse likely to produce great bodily harm or*
 14 *a death, as defined in Section 273a of the Penal Code.*

- 1 (C) Assault resulting in the death of a child under eight years
2 of age, as defined in Section 273ab of the Penal Code.
- 3 (D) Felony domestic violence, as defined in Section 273.5 of
4 the Penal Code.
- 5 (E) Felony physical abuse of an elder or dependent adult, as
6 defined in subdivision (b) of Section 368 of the Penal Code.
- 7 (F) Felony stalking, as defined in Section 646.9 of the Penal
8 Code.
- 9 (G) Solicitation for murder, as defined in subdivision (b) of
10 Section 653f of the Penal Code.
- 11 (H) A serious felony, as defined in subdivision (c) of Section
12 1192.7 of the Penal Code.
- 13 (I) Hit-and-run causing death or injury, as defined in Section
14 20001 of the Vehicle Code.
- 15 (J) Felony driving under the influence causing injury, as defined
16 in Section 23153 of the Vehicle Code.
- 17 (K) Sexual assault as set forth in Section 261, 261.5, 262, 265,
18 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288,
19 288.5, 288a, 289, or 311.4 of the Penal Code.
- 20 (b) (1) As a condition of taking time off for a purpose set forth
21 in subdivision (a), 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 the
28 following:
 - 29 (A) A police report indicating that the employee was a victim
30 of an offense specified in subdivision (a).
 - 31 (B) A court order protecting or separating the employee from
32 the perpetrator of an offense specified in subdivision (a), or other
33 evidence from the court or prosecuting attorney that the employee
34 has appeared in court.
 - 35 (C) Documentation from a medical professional, domestic
36 violence advocate or advocate for victims of sexual assault, health
37 care provider, or counselor that the employee was undergoing
38 treatment for physical or mental injuries or abuse resulting in
39 victimization from an offense specified in subdivision (a).

1 (3) *To the extent allowed by law, the employer shall maintain*
2 *the confidentiality of any employee requesting leave under*
3 *subdivision (a).*

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

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

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

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

33 (f) *For purposes of this section, “victim” means any person*
34 *who suffers direct or threatened physical, psychological, or*
35 *financial harm as a result of the commission or attempted*
36 *commission of a crime or delinquent act. The term “victim” also*
37 *includes the person’s spouse, parent, child, sibling, or guardian.*

38 SEC. 2. *No reimbursement is required by this act pursuant to*
39 *Section 6 of Article XIII B of the California Constitution because*
40 *the only costs that may be incurred by a local agency or school*

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 SECTION 1. ~~Section 230 of the Labor Code is amended to~~
8 ~~read:~~

9 230. ~~(a) An employer may not discharge or in any manner~~
10 ~~discriminate against an employee for taking time off to serve as~~
11 ~~required by law on an inquest jury or trial jury, if the employee,~~
12 ~~prior to taking the time off, gives reasonable notice to the employer~~
13 ~~that he or she is required to serve.~~

14 ~~(b) An employer may not discharge or in any manner~~
15 ~~discriminate or retaliate against an employee, including, but not~~
16 ~~limited to, an employee who is a victim of a crime, for taking time~~
17 ~~off to appear in court to comply with a subpoena or other court~~
18 ~~order as a witness in any judicial proceeding.~~

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

26 ~~(2) An employer may not discharge or in any manner~~
27 ~~discriminate or retaliate against an employee who is a victim of~~
28 ~~an offense listed in this paragraph for taking time off from work,~~
29 ~~upon the victim's request, to appear in court to be heard at any~~
30 ~~proceeding, including any delinquency proceeding, involving a~~
31 ~~postarrest release decision, plea, sentencing, postconviction release~~
32 ~~decision, or any proceeding in which a right of the victim is at~~
33 ~~issue. The offenses include all of the following:~~

34 ~~(A) Vehicular manslaughter while intoxicated, as defined in~~
35 ~~subdivision (c) of Section 191.5 of the Penal Code.~~

36 ~~(B) Felony child abuse likely to produce great bodily harm or~~
37 ~~a death, as defined in Section 273a of the Penal Code.~~

38 ~~(C) Assault resulting in the death of a child under eight years~~
39 ~~of age, as defined in Section 273ab of the Penal Code.~~

- 1 ~~(D) Felony domestic violence, as defined in Section 273.5 of~~
2 ~~the Penal Code.~~
- 3 ~~(E) Felony physical abuse of an elder or dependent adult, as~~
4 ~~defined in subdivision (b) of Section 368 of the Penal Code.~~
- 5 ~~(F) Felony stalking, as defined in Section 646.9 of the Penal~~
6 ~~Code.~~
- 7 ~~(G) Solicitation for murder, as defined in subdivision (b) of~~
8 ~~Section 653f of the Penal Code.~~
- 9 ~~(H) A serious felony, as defined in subdivision (c) of Section~~
10 ~~1192.7 of the Penal Code.~~
- 11 ~~(I) Hit and run causing death or injury, as defined in Section~~
12 ~~20001 of the Vehicle Code.~~
- 13 ~~(J) Felony driving under the influence causing injury, as defined~~
14 ~~in Section 23153 of the Vehicle Code.~~
- 15 ~~(d) (1) As a condition of taking time off for a purpose set forth~~
16 ~~in subdivision (c), the employee shall give the employer reasonable~~
17 ~~advance notice of the employee's intention to take time off, unless~~
18 ~~the advance notice is not feasible.~~
- 19 ~~(2) When an unscheduled absence occurs, the employer shall~~
20 ~~not take any action against the employee if the employee, within~~
21 ~~a reasonable time after the absence, provides a certification to the~~
22 ~~employer. Certification shall be sufficient in the form of any of~~
23 ~~the following:~~
- 24 ~~(A) A police report indicating that the employee was a victim~~
25 ~~of an offense specified in subdivision (c).~~
- 26 ~~(B) A court order protecting or separating the employee from~~
27 ~~the perpetrator of an offense specified in subdivision (c), or other~~
28 ~~evidence from the court or prosecuting attorney that the employee~~
29 ~~has appeared in court.~~
- 30 ~~(C) Documentation from a medical professional, domestic~~
31 ~~violence advocate or advocate for victims of sexual assault, health~~
32 ~~care provider, or counselor that the employee was undergoing~~
33 ~~treatment for physical or mental injuries or abuse resulting in~~
34 ~~victimization from an act of domestic violence or sexual assault.~~
- 35 ~~(3) To the extent allowed by law, the employer shall maintain~~
36 ~~the confidentiality of any employee requesting leave under~~
37 ~~subdivision (c).~~
- 38 ~~(e) Any 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 because the employee has taken time off for
2 a purpose set forth in subdivision (a), (b), or (c) shall be entitled
3 to reinstatement and reimbursement for lost wages and work
4 benefits caused by the acts of the employer. Any employer who
5 willfully refuses to rehire, promote, or otherwise restore an
6 employee or former employee who has been determined to be
7 eligible for rehiring or promotion by a grievance procedure or
8 hearing authorized by law is guilty of a misdemeanor.

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

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

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

28 (h) For purposes of this section:

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

31 (2) “Sexual assault” means any of the crimes set forth in Section
32 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266j, 267, 269,
33 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
34 as amended.

35 (3) “Victim” means any person who suffers direct or threatened
36 physical, psychological, or financial harm as a result of the
37 commission or attempted commission of a crime or delinquent
38 act. The term “victim” also includes the person’s spouse, parent,
39 child, sibling, or guardian.

1 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.~~

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