

Senate Bill No. 288

CHAPTER 756

An act to add Section 230.5 to the Labor Code, relating to employment.

[Approved by Governor October 11, 2013. Filed with
Secretary of State October 11, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

SB 288, 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.

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 described, 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 such a court proceeding. 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.

The people of the State of California do enact as follows:

SECTION 1. Section 230.5 is added to the Labor Code, to read:

230.5. (a) (1) An employer shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of an offense listed in paragraph (2) 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.

(2) The offenses include all of the following:

(A) Vehicular manslaughter while intoxicated, as defined in subdivision (b) of Section 191.5 of the Penal Code.

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

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

(D) Felony domestic violence, as defined in Section 273.5 of the Penal Code.

(E) Felony physical abuse of an elder or dependent adult, as defined in subdivision (b) of Section 368 of the Penal Code.

(F) Felony stalking, as defined in Section 646.9 of the Penal Code.

(G) Solicitation for murder, as defined in subdivision (b) of Section 653f of the Penal Code.

(H) A serious felony, as defined in subdivision (c) of Section 1192.7 of the Penal Code.

(I) Hit-and-run causing death or injury, as defined in Section 20001 of the Vehicle Code.

(J) Felony driving under the influence causing injury, as defined in Section 23153 of the Vehicle Code.

(K) Sexual assault as set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288.5, 288a, 289, or 311.4 of the Penal Code.

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

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time

after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of an offense specified in subdivision (a).

(B) A court order protecting or separating the employee from the perpetrator of an offense specified in subdivision (a), or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an offense specified in subdivision (a).

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

(c) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other 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 a purpose set forth in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any 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.

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

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

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

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

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that

may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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