

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 400

Introduced by Senator Jackson
(Principal coauthor: Senator Leno)
(Coauthor: Senator De León)

February 20, 2013

An act to amend Sections 230 and 230.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 400, as amended, Jackson. Employment protections: victims of domestic violence, sexual assault, or stalking.

(1) Existing law provides protections to victims of domestic violence and sexual assault and prohibits employers from taking adverse employment action against victims of domestic violence and sexual assault who take time off from work to attend to issues arising as a result of the domestic violence or sexual assault, as long as the employee complies with certain conditions. Under existing law, an employee who is discriminated or retaliated against in the terms and conditions of employment by his or her employer for prohibited reasons, or because the employee has taken time off for specified purposes, is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Employers who willfully refuse 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 are guilty of a misdemeanor.

This bill would extend these protections to victims of stalking. The bill would also prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's known status as a victim of domestic violence, sexual assault, or stalking, *as specified*, and *would* require the employer to provide reasonable accommodations for such a victim. The bill would create a private right of action for an aggrieved employee to seek enforcement of those victim status protection and reasonable accommodation provisions. Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.

(2) 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 of the Labor Code is amended to
2 read:

3 230. (a) An employer shall 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 trial jury, if the employee,
6 prior to taking the time off, gives reasonable notice to the employer
7 that the employee is required to serve.

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

13 (c) An employer shall not discharge or in any manner
14 discriminate or retaliate against an employee who is a victim of
15 domestic violence, sexual assault, or stalking for taking time off
16 from work to obtain or attempt to obtain any relief, including, but
17 not limited to, a temporary restraining order, restraining order, or
18 other injunctive relief, to help ensure the health, safety, or welfare
19 of the victim or his or her child.

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

5 (2) When an unscheduled absence occurs, the employer shall
6 not take any action against the employee if the employee, within
7 a reasonable time after the absence, provides a certification to the
8 employer. Certification shall be sufficient in the form of any of
9 the following:

10 (A) A police report indicating that the employee was a victim
11 of domestic violence, sexual assault, or stalking.

12 (B) A court order protecting or separating the employee from
13 the perpetrator of an act of domestic violence, sexual assault, or
14 stalking, or other evidence from the court or prosecuting attorney
15 that the employee has appeared in court.

16 (C) Documentation from a medical professional, domestic
17 violence advocate or advocate for victims of sexual assault, health
18 care provider, or counselor that the employee was undergoing
19 treatment for physical or mental injuries or abuse resulting in
20 victimization from an act of domestic violence, sexual assault, or
21 stalking.

22 (3) To the extent allowed by law and consistent with
23 subparagraph (D) of paragraph (7) of subdivision (f), the employer
24 shall maintain the confidentiality of any employee requesting leave
25 under subdivision (c).

26 (e) An employer shall not discharge or in any manner
27 discriminate or retaliate against an employee because of the
28 employee's ~~known~~ status as a victim of domestic violence, sexual
29 assault, or stalking, *if the victim provides notice to the employer*
30 *of the status or the employer has actual knowledge of the status.*

31 (f) (1) An employer shall provide reasonable accommodations
32 for a victim of domestic violence, sexual assault, or stalking who
33 requests an accommodation for the safety of the victim while at
34 work.

35 (2) For purposes of this subdivision, reasonable accommodations
36 may include the implementation of safety measures, including a
37 transfer, reassignment, modified schedule, changed work telephone,
38 changed work station, installed lock, assistance in documenting
39 domestic violence, sexual assault, or stalking that occurs in the
40 workplace, an implemented safety procedure, or another adjustment

1 to a job structure, workplace facility, or work requirement in
2 response to domestic violence, sexual assault, or stalking, or
3 referral to a victim assistance organization.

4 (3) An employer is not required to provide a reasonable
5 accommodation to an employee who has not disclosed his or her
6 status as a victim of domestic violence, sexual assault, or stalking.

7 (4) The employer shall engage in a timely, good faith, and
8 interactive process with the employee to determine effective
9 reasonable accommodations.

10 (5) In determining whether the accommodation is reasonable,
11 the employer shall consider an exigent circumstance or danger
12 facing the employee.

13 (6) This subdivision does not require the employer to undertake
14 an action that constitutes an undue hardship on the employer's
15 business operations, as defined by Section 12926 of the
16 Government Code.

17 (7) (A) Upon the request of an employer, an employee
18 requesting a reasonable accommodation pursuant to this
19 subdivision shall provide the employer a written statement signed
20 by the employee or an individual acting on the employee's behalf,
21 certifying that the accommodation is for a purpose authorized
22 under this subdivision.

23 (B) The employer may also request certification from an
24 employee requesting an accommodation pursuant to this
25 subdivision demonstrating the employee's status as a victim of
26 domestic violence, sexual assault, or stalking. Certification shall
27 be sufficient in the form of any of the categories described in
28 paragraph (2) of subdivision (d).

29 (C) An employer who requests certification pursuant to
30 subparagraph (B) may request recertification of an employee's
31 status as a victim of domestic violence, sexual assault, or stalking
32 every six months after the date of the previous certification.

33 (D) Any verbal or written statement, police or court record, or
34 other documentation provided to an employer identifying an
35 employee as a victim of domestic violence, sexual assault, or
36 stalking shall be maintained as confidential by the employer and
37 shall not be disclosed by the employer except as required by federal
38 or state law or as necessary to protect the employee's safety in the
39 workplace. The employee shall be given notice before any
40 authorized disclosure.

1 (8) An employer shall not retaliate against a victim of domestic
2 violence, sexual assault, or stalking for requesting a reasonable
3 accommodation, regardless of whether the request was granted.

4 (g) (1) An 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 taken time off for a purpose set forth in subdivision (a) or (b) shall
9 be entitled to reinstatement and reimbursement for lost wages and
10 work benefits caused by the acts of the employer.

11 (2) An employee who is discharged, threatened with discharge,
12 demoted, suspended, or in any other manner discriminated or
13 retaliated against in the terms and conditions of employment by
14 his or her employer for reasons prohibited in subdivision (c) or
15 (e), or because the employee has requested or received a reasonable
16 accommodation as set forth in subdivision (f), is entitled to
17 reinstatement and reimbursement for lost wages and work benefits
18 caused by the acts of the employer, as well as appropriate equitable
19 relief.

20 (3) An employer who willfully refuses to rehire, promote, or
21 otherwise restore an employee or former employee who has been
22 determined to be eligible for rehiring or promotion by a grievance
23 procedure or hearing authorized by law is guilty of a misdemeanor.

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

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

36 (i) An employee who is discharged, threatened with discharge,
37 demoted, suspended, or denied a reasonable accommodation under
38 subdivision (e) or (f) may bring a civil action in the superior court
39 of the appropriate county to enforce those provisions. If the

1 employee prevails in an action pursuant to this subdivision, the
2 court may award reasonable attorney's fees and costs.

3 (j) An employee may use vacation, personal leave, or
4 compensatory time off that is otherwise available to the employee
5 under the applicable terms of employment, unless otherwise
6 provided by a collective bargaining agreement, for time taken off
7 for a purpose specified in subdivision (a), (b), or (c). The
8 entitlement of any employee under this section shall not be
9 diminished by any collective bargaining agreement term or
10 condition.

11 (k) For purposes of this section:

12 (1) "Domestic violence" means any of the types of abuse set
13 forth in Section 6211 of the Family Code, as amended.

14 (2) "Sexual assault" means any of the crimes set forth in Section
15 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,
16 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
17 as amended.

18 (3) "Stalking" means a crime set forth in Section 646.9 of the
19 Penal Code or Section 1708.7 of the Civil Code.

20 SEC. 2. Section 230.1 of the Labor Code is amended to read:

21 230.1. (a) In addition to the requirements and prohibitions
22 imposed on employees pursuant to Section 230, an employer with
23 25 or more employees shall not discharge or in any manner
24 discriminate or retaliate against an employee who is a victim of
25 domestic violence, sexual assault, or stalking for taking time off
26 from work to attend to any of the following:

27 (1) To seek medical attention for injuries caused by domestic
28 violence, sexual assault, or stalking.

29 (2) To obtain services from a domestic violence shelter,
30 program, or rape crisis center as a result of domestic violence,
31 sexual assault, or stalking.

32 (3) To obtain psychological counseling related to an experience
33 of domestic violence, sexual assault, or stalking.

34 (4) To participate in safety planning and take other actions to
35 increase safety from future domestic violence, sexual assault, or
36 stalking, including temporary or permanent relocation.

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

1 (2) When an unscheduled absence occurs, the employer shall
2 not take any action against the employee if the employee, within
3 a reasonable time after the absence, provides a certification to the
4 employer. Certification shall be sufficient in the form of any of
5 the categories described in paragraph (2) of subdivision (d) of
6 Section 230.

7 (3) To the extent allowed by law and consistent with
8 subparagraph (D) of paragraph (7) of subdivision (f) of Section
9 230, employers shall maintain the confidentiality of any employee
10 requesting leave under subdivision (a).

11 (c) An employee who is discharged, threatened with discharge,
12 demoted, suspended, or in any other manner discriminated or
13 retaliated against in the terms and conditions of employment by
14 his or her employer because the employee has taken time off for
15 a purpose set forth in subdivision (a) is entitled to reinstatement
16 and reimbursement for lost wages and work benefits caused by
17 the acts of the employer, as well as appropriate equitable relief.
18 An employer who willfully refuses to rehire, promote, or otherwise
19 restore an employee or former employee who has been determined
20 to be eligible for rehiring or promotion by a grievance procedure
21 or hearing authorized by law is guilty of a misdemeanor.

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

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

33 (e) If an employee prevails in an action pursuant to this section,
34 the court may award reasonable attorney's fees and costs.

35 (f) An employee may use vacation, personal leave, or
36 compensatory time off that is otherwise available to the employee
37 under the applicable terms of employment, unless otherwise
38 provided by a collective bargaining agreement, for time taken off
39 for a purpose specified in subdivision (a). The entitlement of any

1 employee under this section shall not be diminished by any
2 collective bargaining agreement term or condition.

3 (g) This section does not create a right for an employee to take
4 unpaid leave that exceeds the unpaid leave time allowed under, or
5 is in addition to the unpaid leave time permitted by, the federal
6 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et
7 seq.).

8 (h) For purposes of this section:

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

11 (2) “Sexual assault” means any of the crimes set forth in Section
12 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,
13 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
14 as amended.

15 (3) “Stalking” means a crime set forth in Section 646.9 of the
16 Penal Code or Section 1708.7 of the Civil Code.

17 SEC. 3. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.