

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 16, 2013

**SENATE BILL**

**No. 400**

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

February 20, 2013

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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 or sexual assault and assault.~~ Existing law prohibits ~~employers an employer~~ from taking adverse employment action against ~~victims a victim~~ of domestic violence ~~and or~~ sexual assault who ~~take takes~~ 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,~~ Existing law entitles 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~~ Under existing law, an employer who willfully ~~refuse~~ 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—~~are~~ *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 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~~ *stalking if the victim provides notice to the employer of the status or the employer has actual knowledge of the status.* The bill would also require the employer to provide reasonable accommodations *that may include the implementation of safety measures or procedures* 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

1 limited to, an employee who is a victim of a crime, for taking time  
2 off to appear in court to comply with a subpoena or other court  
3 order as a witness in any judicial proceeding.

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

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

15 (2) When an unscheduled absence occurs, the employer shall  
16 not take any action against the employee if the employee, within  
17 a reasonable time after the absence, provides a certification to the  
18 employer. Certification shall be sufficient in the form of any of  
19 the following:

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

22 (B) A court order protecting or separating the employee from  
23 the perpetrator of an act of domestic violence, sexual assault, or  
24 stalking, or other evidence from the court or prosecuting attorney  
25 that the employee has appeared in court.

26 (C) Documentation from a *licensed* medical professional,  
27 domestic violence ~~advocate or advocate for victims of~~ *counselor*,  
28 *as defined in Section 1037.1 of the Evidence Code*, a sexual assault  
29 *counselor*, *as defined in Section 1035.2 of the Evidence Code*,  
30 *licensed* health care provider, or counselor that the employee was  
31 undergoing treatment for physical or mental injuries or abuse  
32 resulting in victimization from an act of domestic violence, sexual  
33 assault, or stalking.

34 (3) To the extent allowed by law and consistent with  
35 subparagraph (D) of paragraph (7) of subdivision (f), the employer  
36 shall maintain the confidentiality of any employee requesting leave  
37 under subdivision (c).

38 (e) An employer shall not discharge or in any manner  
39 discriminate or retaliate against an employee because of the  
40 employee's status as a victim of domestic violence, sexual assault,

1 or stalking, if the victim provides notice to the employer of the  
2 status or the employer has actual knowledge of the status.

3 (f) (1) An employer shall provide reasonable accommodations  
4 for a victim of domestic violence, sexual assault, or stalking who  
5 requests an accommodation for the safety of the victim while at  
6 work.

7 (2) For purposes of this subdivision, reasonable accommodations  
8 may include the implementation of safety measures, including a  
9 transfer, reassignment, modified schedule, changed work telephone,  
10 changed work station, installed lock, assistance in documenting  
11 domestic violence, sexual assault, or stalking that occurs in the  
12 workplace, an implemented safety procedure, or another adjustment  
13 to a job structure, workplace facility, or work requirement in  
14 response to domestic violence, sexual assault, or stalking, or  
15 referral to a victim assistance organization.

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

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

22 (5) In determining whether the accommodation is reasonable,  
23 the employer shall consider an exigent circumstance or danger  
24 facing the employee.

25 (6) This subdivision does not require the employer to undertake  
26 an action that constitutes an undue hardship on the employer's  
27 business operations, as defined by Section 12926 of the  
28 Government Code. *For the purposes of this subdivision, an undue*  
29 *hardship also includes an action that would violate an employer's*  
30 *duty to furnish and maintain a place of employment that is safe*  
31 *and healthful for all employees as required by Section 6400 of the*  
32 *Labor Code.*

33 (7) (A) Upon the request of an employer, an employee  
34 requesting a reasonable accommodation pursuant to this  
35 subdivision shall provide the employer a written statement signed  
36 by the employee or an individual acting on the employee's behalf,  
37 certifying that the accommodation is for a purpose authorized  
38 under this subdivision.

39 (B) The employer may also request certification from an  
40 employee requesting an accommodation pursuant to this

1 subdivision demonstrating the employee’s status as a victim of  
2 domestic violence, sexual assault, or stalking. Certification shall  
3 be sufficient in the form of any of the categories described in  
4 paragraph (2) of subdivision (d).

5 (C) An employer who requests certification pursuant to  
6 subparagraph (B) may request recertification of an employee’s  
7 status as a victim of domestic violence, sexual assault, or stalking  
8 every six months after the date of the previous certification.

9 (D) Any verbal or written statement, police or court record, or  
10 other documentation provided to an employer identifying an  
11 employee as a victim of domestic violence, sexual assault, or  
12 stalking shall be maintained as confidential by the employer and  
13 shall not be disclosed by the employer except as required by federal  
14 or state law or as necessary to protect the employee’s safety in the  
15 workplace. The employee shall be given notice before any  
16 authorized disclosure.

17 (E) (i) *If circumstances change and an employee needs a new*  
18 *accommodation, the employee shall request a new accommodation*  
19 *from the employer.*

20 (ii) *Upon receiving the request, the employer shall engage in a*  
21 *timely, good faith, and interactive process with the employee to*  
22 *determine effective reasonable accommodations.*

23 (F) *If an employee no longer needs an accommodation, the*  
24 *employee shall notify the employer that the accommodation is no*  
25 *longer needed.*

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

29 (g) (1) An employee who is discharged, threatened with  
30 discharge, demoted, suspended, or in any other manner  
31 discriminated or retaliated against in the terms and conditions of  
32 employment by his or her employer because the employee has  
33 taken time off for a purpose set forth in subdivision (a) or (b) shall  
34 be entitled to reinstatement and reimbursement for lost wages and  
35 work benefits caused by the acts of the employer.

36 (2) An employee who is discharged, threatened with discharge,  
37 demoted, suspended, or in any other manner discriminated or  
38 retaliated against in the terms and conditions of employment by  
39 his or her employer for reasons prohibited in subdivision (c) or  
40 (e), or because the employee has requested or received a reasonable

1 accommodation as set forth in subdivision (f), ~~is~~ *shall be* entitled  
2 to reinstatement and reimbursement for lost wages and work  
3 benefits caused by the acts of the employer, as well as appropriate  
4 equitable relief.

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

9 (h) (1) An 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), (e), or (f) may file a complaint with the Division of Labor  
15 Standards Enforcement of the Department of Industrial Relations  
16 pursuant to Section 98.7.

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

21 ~~(i) An employee who is discharged, threatened with discharge,~~  
22 ~~demoted, suspended, or denied a reasonable accommodation under~~  
23 ~~subdivision (e) or (f) may bring a civil action in the superior court~~  
24 ~~of the appropriate county to enforce those provisions. If the~~  
25 ~~employee prevails in an action pursuant to this subdivision, the~~  
26 ~~court may award reasonable attorney’s fees and costs.~~

27 (j)

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

36 ~~(k)~~

37 (j) For purposes of this section:

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

1 (2) “Sexual assault” means any of the crimes set forth in Section  
2 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
3 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
4 as amended.

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

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

8 230.1. (a) In addition to the requirements and prohibitions  
9 imposed on employees pursuant to Section 230, an employer with  
10 25 or more employees shall not discharge or in any manner  
11 discriminate or retaliate against an employee who is a victim of  
12 domestic violence, sexual assault, or stalking for taking time off  
13 from work to attend to any of the following:

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

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

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

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

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

28 (2) When an unscheduled absence occurs, the employer shall  
29 not take any action against the employee if the employee, within  
30 a reasonable time after the absence, provides a certification to the  
31 employer. Certification shall be sufficient in the form of any of  
32 the categories described in paragraph (2) of subdivision (d) of  
33 Section 230.

34 (3) To the extent allowed by law and consistent with  
35 subparagraph (D) of paragraph (7) of subdivision (f) of Section  
36 230, employers shall maintain the confidentiality of any employee  
37 requesting leave under subdivision (a).

38 (c) An 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) is entitled to reinstatement  
3 and reimbursement for lost wages and work benefits caused by  
4 the acts of the employer, as well as appropriate equitable relief.  
5 An employer who willfully refuses to rehire, promote, or otherwise  
6 restore an employee or former employee who has been determined  
7 to be eligible for rehiring or promotion by a grievance procedure  
8 or hearing authorized by law is guilty of a misdemeanor.

9 (d) (1) An 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) may file  
14 a complaint with the Division of Labor Standards Enforcement of  
15 the Department of Industrial Relations pursuant to Section 98.7.

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

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

22 ~~(f)~~

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

30 ~~(g)~~

31 (f) This section does not create a right for an employee to take  
32 unpaid leave that exceeds the unpaid leave time allowed under, or  
33 is in addition to the unpaid leave time permitted by, the federal  
34 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et  
35 seq.).

36 ~~(h)~~

37 (g) For purposes of this section:

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

1 (2) “Sexual assault” means any of the crimes set forth in Section  
2 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,  
3 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,  
4 as amended.

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

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

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