

ASSEMBLY BILL

No. 304

Introduced by Assembly Member Gonzalez

February 12, 2015

An act to amend Section 233 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 304, as introduced, Gonzalez. Sick leave.

Existing law requires an employer who provides sick leave to employees, as specified, to allow the employees to use the sick leave to attend to the illness of a child, parent, spouse, or domestic partner.

This bill would make nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 233 of the Labor Code is amended to
2 read:
3 233. (a) Any employer who provides sick leave for employees
4 shall permit an employee to ~~use~~ *use*, in any calendar ~~year~~ *year*, the
5 employee's accrued and available sick leave entitlement, in an
6 amount not less than the sick leave that would be accrued during
7 six months at the employee's then current rate of entitlement, to
8 attend to an illness of a child, parent, spouse, or domestic partner
9 of the employee. All conditions and restrictions placed by the
10 employer upon the use by an employee of sick leave also shall
11 apply to the use by an employee of sick leave to attend to an illness

1 of his or her child, parent, spouse, or domestic partner. This section
2 does not extend the maximum period of leave to which an
3 employee is entitled under Section 12945.2 of the Government
4 Code or under the federal Family and Medical Leave Act of 1993
5 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee
6 receives sick leave compensation during that leave.

7 (b) As used in this section:

8 (1) “Child” means a biological, foster, or adopted child, a
9 stepchild, a legal ward, a child of a domestic partner, or a child of
10 a person standing in loco parentis.

11 (2) “Employer” means ~~any~~ a person employing another under
12 ~~any~~ an appointment or contract of hire and includes the state,
13 political subdivisions of the state, and municipalities.

14 (3) “Parent” means a biological, foster, or adoptive parent, a
15 stepparent, or a legal guardian.

16 (4) “Sick leave” means accrued increments of compensated
17 leave provided by an employer to an employee as a benefit of the
18 employment for use by the employee during an absence from the
19 employment for any of the following reasons:

20 (A) The employee is physically or mentally unable to perform
21 his or her duties due to illness, injury, or a medical condition of
22 the employee.

23 (B) The absence is for the purpose of obtaining professional
24 diagnosis or treatment for a medical condition of the employee.

25 (C) The absence is for other medical reasons of the employee,
26 such as pregnancy or obtaining a physical examination.

27 “Sick leave” does not include any benefit provided under an
28 employee welfare benefit plan subject to the federal Employee
29 Retirement Income Security Act of 1974 (Public Law 93-406, as
30 amended) and does not include any insurance benefit, workers’
31 compensation benefit, unemployment compensation disability
32 benefit, or benefit not payable from the employer’s general assets.

33 (c) No employer shall deny an employee the right to use sick
34 leave or discharge, threaten to discharge, demote, suspend, or in
35 any manner discriminate against an employee for using, or
36 attempting to exercise the right to use, sick leave to attend to an
37 illness of a child, parent, spouse, or domestic partner of the
38 employee.

1 (d) ~~Any~~ An employee aggrieved by a violation of this section
2 shall be entitled to reinstatement and actual damages or one day's
3 pay, whichever is greater, and to appropriate equitable relief.

4 (e) Upon the filing of a complaint by an employee, the Labor
5 Commissioner shall enforce ~~the provisions of~~ this section in
6 accordance with the provisions of Chapter 4 (commencing with
7 Section 79) of Division 1, including, ~~but not limited to,~~ Sections
8 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee
9 may bring a civil action for the remedies provided by this section
10 in a court of competent jurisdiction. If the employee prevails, the
11 court may award reasonable attorney's fees.

12 (f) The rights and remedies specified in this section are
13 cumulative and nonexclusive and are in addition to any other rights
14 or remedies afforded by contract or under other provisions of law.