

ASSEMBLY BILL

No. 2337

Introduced by Assembly Member Burke

February 18, 2016

An act to amend Section 230.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as introduced, Burke. Employment protections.

Existing law prohibits an employer with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for specified reasons related to the domestic violence, sexual assault, or stalking.

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 230.1 of the Labor Code is amended to
2 read:
3 230.1. (a) In addition to the requirements and prohibitions
4 imposed on employees pursuant to Section 230, an employer with
5 25 or more employees shall not ~~discharge~~ *discharge*, or in any
6 manner discriminate or retaliate ~~against~~ *against*, an employee who
7 is a victim of domestic violence, sexual assault, or stalking for
8 taking time off from work ~~to attend to~~ *for* any of the ~~following~~:
9 *following purposes:*

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

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

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

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

11 (b) (1) As a condition of taking time off for a purpose set forth
12 in subdivision (a), 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 categories described in paragraph (2) of subdivision (d) of
20 Section 230.

21 (3) To the extent allowed by law and consistent with
22 subparagraph (D) of paragraph (7) of subdivision (f) of Section
23 230, employers shall maintain the confidentiality of any employee
24 requesting leave under subdivision (a).

25 (c) An employee who is discharged, threatened with discharge,
26 demoted, suspended, or in any other manner discriminated or
27 retaliated against in the terms and conditions of employment by
28 his or her employer because the employee has taken time off for
29 a purpose set forth in subdivision (a) is entitled to reinstatement
30 and reimbursement for lost wages and work benefits caused by
31 the acts of the employer, as well as appropriate equitable relief.
32 An employer who willfully refuses to rehire, promote, or otherwise
33 restore an employee or former employee who has been determined
34 to be eligible for rehiring or promotion by a grievance procedure
35 or hearing authorized by law is guilty of a misdemeanor.

36 (d) (1) An employee who is discharged, threatened with
37 discharge, demoted, suspended, or in any other manner
38 discriminated or retaliated against in the terms and conditions of
39 employment by his or her employer because the employee has
40 exercised his or her rights as set forth in subdivision (a) may file

1 a complaint with the Division of Labor Standards Enforcement of
2 the Department of Industrial Relations pursuant to Section 98.7.

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

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

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

20 (g) For purposes of this section:

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

23 (2) “Sexual assault” means any of the crimes set forth in Section
24 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,
25 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
26 as amended.

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