

Introduced by Senator Jackson

February 26, 2015

An act to amend ~~Section 233~~ Sections 230.8, 233, 245.5, and 246.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Jackson. Employees: ~~sick leave~~ time off.

(1) Existing law prohibits an employer who employs 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody of a child in a licensed child day care facility or in kindergarten or grades 1 to 12, inclusive, for taking off up to 40 hours each year for the purpose of participating in school activities, subject to specified conditions. Existing law requires an employee to provide documentation regarding these activities upon request by an employer and provides remedies to employees discharged, demoted, or in any other manner discriminated against as a result of his or her exercise of this right to take time off.

This bill would include the finding, enrolling, or reenrolling of a child in a school or day care facility as activities for which a parent, guardian, or grandparent having custody of a child shall not be discriminated against or discharged, as described above.

~~Existing~~

(2) Existing law requires an employer who provides sick leave for employees to permit an employee to use the employee's accrued and available sick leave entitlement to attend to the illness of a ~~family member, as prescribed,~~ child, parent, spouse, or domestic partner and

prohibits an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave to attend to such an illness.

This bill would additionally require ~~that an~~ employer to permit an employee to use sick leave to address a ~~childcare~~ *child care* or school emergency, as defined, *or attend to the preventive care of a child, parent, spouse, or domestic partner*, and would prohibit an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave ~~to address a childcare or school emergency~~ *for these purposes*.

(3) *The Healthy Workplaces, Healthy Families Act of 2014 requires an employer, upon the request of an employee, to provide paid sick days for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or the employee’s family member, as specified.*

This bill would additionally require an employer to provide paid sick days upon the request of an employee to address a child care or school emergency, as defined.

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

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

1 SECTION 1. Section 230.8 of the Labor Code is amended to
2 read:
3 230.8. (a) (1) ~~No~~—An employer who employs 25 or more
4 employees working at the same location shall *not* discharge or in
5 any way discriminate against an employee who is a parent,
6 guardian, or grandparent having ~~custody~~, *custody* of one or more
7 children ~~in~~ *of the age to attend* kindergarten or grades 1 to 12,
8 inclusive, or ~~attending~~ a licensed child day care facility, for taking
9 off up to 40 hours each year, not exceeding eight hours in any
10 calendar month of the year, ~~to participate in activities of the school~~
11 ~~or licensed child day care facility of any of his or her children~~, *for*
12 *the purpose of either of the following child-related activities*, if
13 the employee, prior to taking the time off, gives reasonable notice
14 to the employer of the planned absence of the ~~employee~~. *employee*:

1 (A) *To find, enroll, or reenroll his or her child in a school or*
2 *licensed day care facility.*

3 (B) *To participate in activities of the school or licensed day*
4 *care facility of his or her child.*

5 (2) If both parents of a child are employed by the same employer
6 at the same worksite, the entitlement under paragraph (1) of a
7 planned absence as to that child applies, at any one time, only to
8 the parent who first gives notice to the employer, such that the
9 other parent may take a planned absence simultaneously as to that
10 same child under the conditions described in paragraph (1) only
11 if he or she obtains the employer's approval for the requested time
12 off.

13 (b) (1) The employee shall utilize existing vacation, personal
14 leave, or compensatory time off for purposes of the planned
15 absence authorized by this section, unless otherwise provided by
16 a collective bargaining agreement entered into before January 1,
17 1995, and in effect on that date. An employee also may utilize time
18 off without pay for this purpose, to the extent made available by
19 his or her employer. The entitlement of any employee under this
20 section shall not be diminished by any collective bargaining
21 agreement term or condition that is agreed to on or after January
22 1, 1995.

23 (2) Notwithstanding paragraph (1), in the event that all
24 permanent, full-time employees of an employer are accorded
25 vacation during the same period of time in the calendar year, an
26 employee of that employer may not utilize that accrued vacation
27 benefit at any other time for purposes of the planned absence
28 authorized by this section.

29 (c) The employee, if requested by the employer, shall provide
30 documentation from the school or licensed child day care facility
31 as proof that he or she ~~participated in school or licensed child day~~
32 ~~care facility activities~~ *engaged in child-related activities permitted*
33 *in subdivision (a)* on a specific date and at a particular time. For
34 purposes of this subdivision, "documentation" means whatever
35 written verification of parental participation the school or licensed
36 child day care facility deems appropriate and reasonable.

37 (d) Any employee who is discharged, threatened with discharge,
38 demoted, suspended, or in any other manner discriminated against
39 in terms and conditions of employment by his or her employer
40 because the employee has taken time off to ~~participate in school~~

1 ~~or licensed child day care facility activities as described in this~~
 2 ~~section~~ *engage in child-related activities permitted in subdivision*
 3 *(a)* shall be entitled to reinstatement and reimbursement for lost
 4 wages and work benefits caused by the acts of the employer. Any
 5 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 arbitration, or hearing authorized by law shall be subject to a civil
 9 penalty in an amount equal to three times the amount of the
 10 employee’s lost wages and work benefits.

11 **SECTION 1.**

12 *SEC. 2.* Section 233 of the Labor Code is amended to read:

13 233. (a) Any employer who provides sick leave for employees
 14 shall permit an employee to use in any calendar year the
 15 employee’s accrued and available sick leave entitlement, in an
 16 amount not less than the sick leave that would be accrued during
 17 six months at the employee’s then current rate of entitlement, to
 18 attend to an illness *or the preventive care* of a child, parent, spouse,
 19 or domestic partner of the employee, or to address a ~~child care~~ *child*
 20 *care* or school emergency. All conditions and restrictions placed
 21 by the employer upon the use by an employee of sick leave also
 22 shall apply to the use by an employee of sick leave to attend to an
 23 illness *or the preventive care* of his or her child, parent, spouse,
 24 or domestic ~~partner.~~ *partner, or to address a child care or school*
 25 *emergency.* This section does not extend the maximum period of
 26 leave to which an employee is entitled under Section 12945.2 of
 27 the Government Code or under the federal Family and Medical
 28 Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), regardless of
 29 whether the employee receives sick leave compensation during
 30 that leave.

31 (b) As used in this section:

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

35 (2) ~~“Child care~~ “*Child care* or school emergency” means that a
 36 *an employee’s* child cannot remain in a school or child care facility
 37 due to one of the following:

- 38 (A) Illness of, or injury to, the child.
- 39 (B) Behavioral or discipline problems.
- 40 (C) Closure of the facility.

1 (D) A disaster or extreme weather conditions, including, but
2 not limited to, fire, earthquake, or flood.

3 (3) “Employer” means any person employing another under
4 any appointment or contract of hire and includes the state, political
5 subdivisions of the state, and municipalities.

6 (4) “Parent” means a biological, foster, or adoptive parent, a
7 stepparent, or a legal guardian.

8 (5) (A) “Sick leave” means accrued increments of compensated
9 leave provided by an employer to an employee as a benefit of the
10 employment for use by the employee during an absence from the
11 employment for any of the following reasons:

12 (i) The employee is physically or mentally unable to perform
13 his or her duties due to illness, injury, or a medical condition of
14 the employee.

15 (ii) The absence is for the purpose of obtaining professional
16 diagnosis or treatment for a medical condition of the employee.

17 (iii) The absence is for other medical reasons of the employee,
18 such as pregnancy or obtaining a physical examination.

19 (iv) *The absence is to attend to an illness or the preventive care*
20 *of a child, parent, spouse, or domestic partner of the employee.*

21 (v) *The absence is to address a child care or school emergency.*

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

28 (c) An employer shall not deny an employee the right to use
29 sick leave or discharge, threaten to discharge, demote, suspend,
30 or in any manner discriminate against an employee for using, or
31 attempting to exercise the right to use, sick leave to attend to an
32 illness *or the preventive care* of a child, parent, spouse, or domestic
33 partner of the employee, or to address a ~~child care~~ *child care* or
34 school emergency.

35 (d) Any employee aggrieved by a violation of this section shall
36 be entitled to reinstatement and actual damages or one day’s pay,
37 whichever is greater, and to appropriate equitable relief.

38 (e) Upon the filing of a complaint by an employee, the Labor
39 Commissioner shall enforce this section in accordance with Chapter
40 4 (commencing with Section 79) of Division 1, including, but not

1 limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive.
2 Alternatively, an employee may bring a civil action for the
3 remedies provided by this section in a court of competent
4 jurisdiction. If the employee prevails, the court may award
5 reasonable attorney’s fees.

6 (f) The rights and remedies specified in this section are
7 cumulative and nonexclusive and are in addition to any other rights
8 or remedies afforded by contract or under other law.

9 *SEC. 3. Section 245.5 of the Labor Code is amended to read:*
10 245.5. As used in this article:

11 (a) “*Child care or school emergency*” means that an employee’s
12 child cannot remain in a school or child care facility due to one
13 of the following:

- 14 (1) *Illness of, or injury to, the child.*
- 15 (2) *Behavioral or discipline problems.*
- 16 (3) *Closure of the facility.*
- 17 (4) *A disaster or extreme weather conditions, including, but not*
18 *limited to, fire, earthquake, or flood.*

19 (a)

20 (b) “Employee” does not include the following:

21 (1) An employee covered by a valid collective bargaining
22 agreement if the agreement expressly provides for the wages, hours
23 of work, and working conditions of employees, and expressly
24 provides for paid sick days or a paid leave or paid time off policy
25 that permits the use of sick days for those employees, final and
26 binding arbitration of disputes concerning the application of its
27 paid sick days provisions, premium wage rates for all overtime
28 hours worked, and regular hourly rate of pay of not less than 30
29 percent more than the state minimum wage rate.

30 (2) An employee in the construction industry covered by a valid
31 collective bargaining agreement if the agreement expressly provides
32 for the wages, hours of work, and working conditions of
33 employees, premium wage rates for all overtime hours worked,
34 and regular hourly pay of not less than 30 percent more than the
35 state minimum wage rate, and the agreement either (A) was entered
36 into before January 1, 2015, or (B) expressly waives the
37 requirements of this article in clear and unambiguous terms. For
38 purposes of this subparagraph, “employee in the construction
39 industry” means an employee performing onsite work associated
40 with construction, including work involving alteration, demolition,

1 building, excavation, renovation, remodeling, maintenance,
2 improvement, repair work, and any other work as described by
3 Chapter 9 (commencing with Section 7000) of Division 3 of the
4 Business and Professions Code, and other similar or related
5 occupations or trades.

6 (3) A provider of in-home supportive services under Section
7 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing
8 with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the
9 Welfare and Institutions Code.

10 (4) An individual employed by an air carrier as a flight deck or
11 cabin crew member that is subject to the provisions of Title II of
12 the federal Railway Labor Act (45 U.S.C. *Sec.* 181 et seq.),
13 provided that the individual is provided with compensated time
14 off equal to or exceeding the amount established in paragraph (1)
15 of subdivision (b) of Section 246.

16 ~~(b)~~

17 (c) “Employer” means any person employing another under any
18 appointment or contract of hire and includes the state, political
19 subdivisions of the state, and municipalities.

20 ~~(e)~~

21 (d) “Family member” means any of the following:

22 (1) A child, which for purposes of this article means a biological,
23 adopted, or foster child, stepchild, legal ward, or a child to whom
24 the employee stands in loco parentis. This definition of a child is
25 applicable regardless of age or dependency status.

26 (2) A biological, adoptive, or foster parent, stepparent, or legal
27 guardian of an employee or the employee’s spouse or registered
28 domestic partner, or a person who stood in loco parentis when the
29 employee was a minor child.

30 (3) A spouse.

31 (4) A registered domestic partner.

32 (5) A grandparent.

33 (6) A grandchild.

34 (7) A sibling.

35 ~~(d)~~

36 (e) “Health care provider” has the same meaning as defined in
37 paragraph (6) of subdivision (c) of Section 12945.2 of the
38 Government Code.

39 ~~(e)~~

1 (f) “Paid sick days” means time that is compensated at the same
2 wage as the employee normally earns during regular work hours
3 and is provided by an employer to an employee for the purposes
4 described in Section 246.5.

5 *SEC. 4. Section 246.5 of the Labor Code is amended to read:*

6 246.5. (a) Upon the oral or written request of an employee,
7 an employer shall provide paid sick days for the following
8 purposes:

9 (1) Diagnosis, care, or treatment of an existing health condition
10 of, or preventive care for, an employee or an employee’s family
11 member.

12 (2) *To address a child care or school emergency.*

13 ~~(2)~~

14 (3) For an employee who is a victim of domestic violence, sexual
15 assault, or stalking, the purposes described in subdivision (c) of
16 Section 230 and subdivision (a) of Section 230.1.

17 (b) An employer shall not require as a condition of using paid
18 sick days that the employee search for or find a replacement worker
19 to cover the days during which the employee uses paid sick days.

20 (c) (1) An employer shall not deny an employee the right to
21 use accrued sick days, discharge, threaten to discharge, demote,
22 suspend, or in any manner discriminate against an employee for
23 using accrued sick days, attempting to exercise the right to use
24 accrued sick days, filing a complaint with the department or
25 alleging a violation of this article, cooperating in an investigation
26 or prosecution of an alleged violation of this article, or opposing
27 any policy or practice or act that is prohibited by this article.

28 (2) There shall be a rebuttable presumption of unlawful
29 retaliation if an employer denies an employee the right to use
30 accrued sick days, discharges, threatens to discharge, demotes,
31 suspends, or in any manner discriminates against an employee
32 within 30 days of any of the following:

33 (A) The filing of a complaint by the employee with the Labor
34 Commissioner or alleging a violation of this article.

35 (B) The cooperation of an employee with an investigation or
36 prosecution of an alleged violation of this article.

37 (C) Opposition by the employee to a policy, practice, or act that
38 is prohibited by this article.

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