

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 579

Introduced by Senator Jackson

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Jackson. Employees: 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 *revise references to a day care facility to instead refer to a child care provider. The bill would include the addressing of a child care provider emergency or a school emergency, as defined, and the finding, enrolling, or reenrolling of a child in a school or day with a child care facility provider as activities for which a parent, guardian, or grandparent having custody of a child shall not be discriminated against or discharged, as described above. The bill would extend these*

protections to an employee who is a stepparent or foster parent or who stands in loco parentis to a child.

(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 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. *The Healthy Workplaces, Healthy Families Act of 2014 requires an employer, upon the request of an employee, to provide paid sick days for a victim of domestic violence or the diagnosis, care, or treatment of an existing health condition of, or preventive care for, the employee or the employee's family member, which is defined as including, in addition to the above-described relatives, grandparents, grandchild, and siblings.*

This bill would ~~additionally~~ *instead* require an employer to permit an employee to use sick leave ~~to address a child care or school emergency, as defined, or attend to the preventive care of a child, parent, spouse, or domestic partner,~~ *for the purposes specified in the Healthy Workplaces, Healthy Families Act of 2014,* 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 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) An employer who employs 25 or more
- 4 employees working at the same location shall not discharge or in

1 any way discriminate against an employee who is a parent,
2 guardian, *stepparent, foster parent*, or grandparent having custody
3 ~~of of, or an employee who stands in loco parentis to~~, one or more
4 children of the age to attend kindergarten or grades 1 to 12,
5 inclusive, or a licensed child-day care facility, *provider*, for taking
6 off up to 40 hours each year, ~~not exceeding eight hours in any~~
7 ~~calendar month of the year~~, for the purpose of either of the
8 following child-related activities, ~~if the employee, prior to taking~~
9 ~~the time off, gives reasonable notice to the employer of the planned~~
10 ~~absence of the employee:~~ *activities:*

11 (A) To find, enroll, or reenroll his or her child in a school or
12 ~~with a licensed-day child care facility. provider, or to participate~~
13 ~~in activities of the school or licensed child care provider of his or~~
14 ~~her child, if the employee, prior to taking the time off, gives~~
15 ~~reasonable notice to the employer of the planned absence of the~~
16 ~~employee. Time off pursuant to this subparagraph shall not exceed~~
17 ~~eight hours in any calendar month of the year.~~

18 ~~(B) To participate in activities of the school or licensed day care~~
19 ~~facility of his or her child.~~

20 (B) *To address a child care provider or school emergency, if*
21 *the employee gives notice to the employer.*

22 (2) If both parents of a child are employed by the same employer
23 at the same worksite, the entitlement under paragraph (1) of a
24 planned absence as to that child applies, at any one time, only to
25 the parent who first gives notice to the employer, such that the
26 other parent may take a planned absence simultaneously as to that
27 same child under the conditions described in paragraph (1) only
28 if he or she obtains the employer's approval for the requested time
29 off.

30 (b) (1) The employee shall utilize existing vacation, personal
31 leave, or compensatory time off for purposes of the planned
32 absence authorized by this section, unless otherwise provided by
33 a collective bargaining agreement entered into before January 1,
34 1995, and in effect on that date. An employee also may utilize time
35 off without pay for this purpose, to the extent made available by
36 his or her employer. The entitlement of any employee under this
37 section shall not be diminished by any collective bargaining
38 agreement term or condition that is agreed to on or after January
39 1, 1995.

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

7 (c) The employee, if requested by the employer, shall provide
8 documentation from the school or licensed child-day care-facility
9 provider as proof that he or she engaged in child-related activities
10 permitted in subdivision (a) on a specific date and at a particular
11 time. For purposes of this subdivision, “documentation” means
12 whatever written verification of parental participation the school
13 or licensed child-day care-facility provider deems appropriate and
14 reasonable.

15 (d) Any employee who is discharged, threatened with discharge,
16 demoted, suspended, or in any other manner discriminated against
17 in terms and conditions of employment by his or her employer
18 because the employee has taken time off to engage in child-related
19 activities permitted in subdivision (a) shall be entitled to
20 reinstatement and reimbursement for lost wages and work benefits
21 caused by the acts of the employer. Any employer who willfully
22 refuses to rehire, promote, or otherwise restore an employee or
23 former employee who has been determined to be eligible for
24 rehiring or promotion by a grievance procedure, arbitration, or
25 hearing authorized by law shall be subject to a civil penalty in an
26 amount equal to three times the amount of the employee’s lost
27 wages and work benefits.

28 (e) For purposes of this section, “child care provider or school
29 emergency” means that an employee’s child cannot remain in a
30 school or with a child care provider due to one of the following:

31 (1) The school or child care provider has requested that the
32 child be picked up, or has an attendance policy, excluding planned
33 holidays, that prohibits the child from attending or requires the
34 child to be picked up from the school or child care provider.

35 (2) Behavioral or discipline problems.

36 (3) Closure or unexpected unavailability of the school or child
37 care provider, excluding planned holidays.

38 (4) A natural disaster, including, but not limited to, fire,
39 earthquake, or flood.

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

1 233. (a) Any employer who provides sick leave for employees
2 shall permit an employee to use in any calendar year the
3 employee's accrued and available sick leave entitlement, in an
4 amount not less than the sick leave that would be accrued during
5 six months at the employee's then current rate of entitlement, ~~to~~
6 ~~attend to an illness or the preventive care of a child, parent, spouse,~~
7 ~~or domestic partner of the employee, or to address a child care or~~
8 ~~school emergency. All conditions and restrictions placed by the~~
9 ~~employer upon the use by an employee of sick leave also shall~~
10 ~~apply to the use by an employee of sick leave to attend to an illness~~
11 ~~or the preventive care of his or her child, parent, spouse, or~~
12 ~~domestic partner, or to address a child care or school emergency.~~
13 *for the reasons specified in subdivision (a) of Section 246.5.* This
14 section does not extend the maximum period of leave to which an
15 employee is entitled under Section 12945.2 of the Government
16 Code or under the federal Family and Medical Leave Act of 1993
17 (29 U.S.C. Sec. 2601 et seq.), regardless of whether the employee
18 receives sick leave compensation during that leave.

19 (b) As used in this section:

20 (1) ~~“Child” means a biological, foster, or adopted child, a~~
21 ~~stepchild, a legal ward, a child of a domestic partner, or a child of~~
22 ~~a person standing in loco parentis.~~

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

26 (A) ~~Illness of, or injury to, the child.~~

27 (B) ~~Behavioral or discipline problems.~~

28 (C) ~~Closure of the facility.~~

29 (D) ~~A disaster or extreme weather conditions, including, but~~
30 ~~not limited to, fire, earthquake, or flood.~~

31 (3)

32 (1) “Employer” means any person employing another under
33 any appointment or contract of hire and includes the state, political
34 subdivisions of the state, and municipalities.

35 (4) ~~“Parent” means a biological, foster, or adoptive parent, a~~
36 ~~stepparent, or a legal guardian.~~

37 (2) *“Family member” has the same meaning as defined in*
38 *Section 245.5.*

39 (5)

1 (3) (A) “Sick leave” means accrued increments of compensated
2 leave provided by an employer to an employee as a benefit of the
3 employment for use by the employee during an absence from the
4 employment for any of the following reasons:
5 (i) The employee is physically or mentally unable to perform
6 his or her duties due to illness, injury, or a medical condition of
7 the employee.
8 (ii) The absence is for the purpose of obtaining professional
9 diagnosis or treatment for a medical condition of the employee.
10 (iii) The absence is for other medical reasons of the employee,
11 such as pregnancy or obtaining a physical examination.
12 ~~(iv) The absence is to attend to an illness or the preventive care~~
13 ~~of a child, parent, spouse, or domestic partner of the employee.~~
14 ~~(v) The absence is to address a child care or school emergency.~~
15 (B) “Sick leave” does not include any benefit provided under
16 an employee welfare benefit plan subject to the federal Employee
17 Retirement Income Security Act of 1974 (Public Law 93-406, as
18 amended) and does not include any insurance benefit, workers’
19 compensation benefit, unemployment compensation disability
20 benefit, or benefit not payable from the employer’s general assets.
21 (c) An employer shall not deny an employee the right to use
22 sick leave or discharge, threaten to discharge, demote, suspend,
23 or in any manner discriminate against an employee for using, or
24 attempting to exercise the right to use, sick leave to attend to an
25 illness or the preventive care of ~~a child, parent, spouse, or domestic~~
26 ~~partner of the employee, or to address a child care or school~~
27 ~~emergency.~~ *family member, or for any other reason specified in*
28 *Section 246.5.*
29 (d) Any employee aggrieved by a violation of this section shall
30 be entitled to reinstatement and actual damages or one day’s pay,
31 whichever is greater, and to appropriate equitable relief.
32 (e) Upon the filing of a complaint by an employee, the Labor
33 Commissioner shall enforce this section in accordance with Chapter
34 4 (commencing with Section 79) of Division 1, including, but not
35 limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive.
36 Alternatively, an employee may bring a civil action for the
37 remedies provided by this section in a court of competent
38 jurisdiction. If the employee prevails, the court may award
39 reasonable attorney’s fees.

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

4 ~~SEC. 3. Section 245.5 of the Labor Code is amended to read:~~
5 ~~245.5. As used in this article:~~

6 (a) ~~“Child care or school emergency” means that an employee’s~~
7 ~~child cannot remain in a school or child care facility due to one of~~
8 ~~the following:~~

9 (1) ~~Illness of, or injury to, the child.~~

10 (2) ~~Behavioral or discipline problems.~~

11 (3) ~~Closure of the facility.~~

12 (4) ~~A disaster or extreme weather conditions, including, but not~~
13 ~~limited to, fire, earthquake, or flood.~~

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

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

24 (2) ~~An employee in the construction industry covered by a valid~~
25 ~~collective bargaining agreement if the agreement expressly provides~~
26 ~~for the wages, hours of work, and working conditions of~~
27 ~~employees, premium wage rates for all overtime hours worked,~~
28 ~~and regular hourly pay of not less than 30 percent more than the~~
29 ~~state minimum wage rate, and the agreement either (A) was entered~~
30 ~~into before January 1, 2015, or (B) expressly waives the~~
31 ~~requirements of this article in clear and unambiguous terms. For~~
32 ~~purposes of this subparagraph, “employee in the construction~~
33 ~~industry” means an employee performing onsite work associated~~
34 ~~with construction, including work involving alteration, demolition,~~
35 ~~building, excavation, renovation, remodeling, maintenance,~~
36 ~~improvement, repair work, and any other work as described by~~
37 ~~Chapter 9 (commencing with Section 7000) of Division 3 of the~~
38 ~~Business and Professions Code, and other similar or related~~
39 ~~occupations or trades.~~

1 ~~(3) A provider of in-home supportive services under Section~~
2 ~~14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing~~
3 ~~with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the~~
4 ~~Welfare and Institutions Code.~~

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

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

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

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

19 ~~(2) A biological, adoptive, or foster parent, stepparent, or legal~~
20 ~~guardian of an employee or the employee’s spouse or registered~~
21 ~~domestic partner, or a person who stood in loco parentis when the~~
22 ~~employee was a minor child.~~

23 ~~(3) A spouse.~~

24 ~~(4) A registered domestic partner.~~

25 ~~(5) A grandparent.~~

26 ~~(6) A grandchild.~~

27 ~~(7) A sibling.~~

28 ~~(e) “Health care provider” has the same meaning as defined in~~
29 ~~paragraph (6) of subdivision (c) of Section 12945.2 of the~~
30 ~~Government Code.~~

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

35 ~~SEC. 4. Section 246.5 of the Labor Code is amended to read:~~

36 ~~246.5. (a) Upon the oral or written request of an employee,~~
37 ~~an employer shall provide paid sick days for the following~~
38 ~~purposes:~~

- 1 ~~(1) Diagnosis, care, or treatment of an existing health condition~~
2 ~~of, or preventive care for, an employee or an employee's family~~
3 ~~member.~~
- 4 ~~(2) To address a child care or school emergency.~~
- 5 ~~(3) For an employee who is a victim of domestic violence, sexual~~
6 ~~assault, or stalking, the purposes described in subdivision (c) of~~
7 ~~Section 230 and subdivision (a) of Section 230.1.~~
- 8 ~~(b) An employer shall not require as a condition of using paid~~
9 ~~sick days that the employee search for or find a replacement worker~~
10 ~~to cover the days during which the employee uses paid sick days.~~
- 11 ~~(c) (1) An employer shall not deny an employee the right to~~
12 ~~use accrued sick days, discharge, threaten to discharge, demote,~~
13 ~~suspend, or in any manner discriminate against an employee for~~
14 ~~using accrued sick days, attempting to exercise the right to use~~
15 ~~accrued sick days, filing a complaint with the department or~~
16 ~~alleging a violation of this article, cooperating in an investigation~~
17 ~~or prosecution of an alleged violation of this article, or opposing~~
18 ~~any policy or practice or act that is prohibited by this article.~~
- 19 ~~(2) There shall be a rebuttable presumption of unlawful~~
20 ~~retaliation if an employer denies an employee the right to use~~
21 ~~accrued sick days, discharges, threatens to discharge, demotes,~~
22 ~~suspends, or in any manner discriminates against an employee~~
23 ~~within 30 days of any of the following:~~
 - 24 ~~(A) The filing of a complaint by the employee with the Labor~~
25 ~~Commissioner or alleging a violation of this article.~~
 - 26 ~~(B) The cooperation of an employee with an investigation or~~
27 ~~prosecution of an alleged violation of this article.~~
 - 28 ~~(C) Opposition by the employee to a policy, practice, or act that~~
29 ~~is prohibited by this article.~~