

AMENDED IN ASSEMBLY APRIL 26, 2000

AMENDED IN ASSEMBLY APRIL 6, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2357

Introduced by Assembly Member Honda
(~~Coauthor: Assembly Member Gallegos~~)
(Coauthors: Assembly Members Aroner, Cardenas,
Gallegos, and Kuehl)
(Coauthor: Senator Bowen)

February 24, 2000

An act to ~~add Section 234 to~~ *amend Section 230 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2357, as amended, Honda. Victims of Domestic Violence Employment Leave Act.

Existing law prohibits an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence for taking time off from work to obtain judicial relief to help ensure the health, safety, or welfare of the employee or his or her child. *Existing law provides that an employee who has been discharged or discriminated or retaliated against in violation of these provisions is entitled to reinstatement and reimbursement of lost wages and benefits. The failure of an employer to rehire, promote, or restore an eligible employee constitutes a misdemeanor.*

This bill would ~~additionally~~ enact the Victims of Domestic Violence Employment Leave Act, which would ~~entitle~~ employees who are victims of domestic violence to a total of 15 days' unpaid leave during any 12-month period for specified reasons relating to that domestic violence, as defined. The bill's provisions would apply only to employers that employ 50 or more persons and would provide certain civil remedies, subject to a 2-year statute of limitations, against employers who violate the bill's provisions *additionally prohibit an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence and who takes time off to seek medical attention, to recover from injuries, to obtain services from a domestic violence program, to obtain psychological counseling, or to participate in safety planning. The bill would require the employee to give the employer reasonable advance notice of the intention to take time off, as provided. Under the bill, an employer would be required to maintain the confidentiality of an employee who requests time off pursuant to the bill. By revising and expanding the scope of a crime, this bill would impose a state-mandated local program.*

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: ~~no~~ yes.

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

- 1 ~~SECTION 1. Section 234 is added to the Labor Code,~~
- 2 ~~to read:~~
- 3 ~~234. (a) This section~~
- 4 *SECTION 1. (a) This act shall be known and may be*
- 5 *cited as the Victims of Domestic Violence Employment*
- 6 *Leave Act.*
- 7 *(b) The Legislature finds and declares the following:*



1 (1) Domestic violence affects many persons without
2 regard to age, race, educational level, socioeconomic
3 status, religion, or occupation.

4 (2) Domestic violence is a crime that has a devastating
5 effect on families, communities, and the workplace.

6 (3) Domestic violence impacts productivity,
7 effectiveness, absenteeism, and employee turnover in the
8 workplace.

9 (4) The National Crime Survey estimates that 175,000
10 days per year are missed from paid work due to domestic
11 violence.

12 (5) The study also found that 56 percent of the victims
13 were late for work at least five times a month, 28 percent
14 of the victims had to leave work early at least five times
15 a month, and 54 percent missed at least three days a
16 month, all due to domestic violence.

17 (6) Victims of domestic violence may be vulnerable at
18 work when trying to end an abusive relationship because
19 the workplace may be the only place where the
20 perpetrator knows to contact the victim.

21 (7) Employers must be sensitive to the needs of
22 employees who are experiencing domestic violence and
23 be responsive to those needs through personnel leave and
24 benefits policies.

25 (8) Employees who commit acts of domestic violence
26 at or away from the workplace should be disciplined in
27 the same manner as employees who commit other acts of
28 violence or harassment at or away from the workplace.

29 ~~(e) The following words and phrases used in this~~
30 ~~section shall have the meanings given to them in this~~
31 ~~section unless the context clearly indicates otherwise:~~

32 ~~(1) “Domestic violence” shall have the same meaning~~
33 ~~as in Section 6211 of the Family Code.~~

34 ~~(2) “Eligible employee” means an individual who was~~
35 ~~employed for at least 12 months or 1,250 hours during the~~
36 ~~previous 12-month period.~~

37 ~~(3) “Employer” means any business that employed 50~~
38 ~~or more individuals for each working day during each of~~
39 ~~20 or more calendar workweeks in the current or~~
40 ~~preceding calendar year.~~



- 1 ~~(4) “Perpetrator” means a person who engages in~~
2 ~~domestic violence against another person or persons.~~
- 3 ~~(5) “Victim of domestic violence” means a person who~~
4 ~~is subjected to domestic violence by a perpetrator.~~
- 5 ~~(d) Eligible employees shall be entitled to a total of 15~~
6 ~~days’ unpaid leave during any 12-month period for one or~~
7 ~~more of the following:~~
- 8 ~~(1) Being unable to attend or perform work due to an~~
9 ~~incident of domestic violence.~~
- 10 ~~(2) Seeking medical attention for or recovering from~~
11 ~~injuries caused by domestic violence.~~
- 12 ~~(3) Seeking legal assistance or remedies, including~~
13 ~~communicating with the police or an attorney, or~~
14 ~~participating in any legal proceeding, related to domestic~~
15 ~~violence.~~
- 16 ~~(4) Obtaining services from a domestic violence~~
17 ~~shelter or program or rape crisis center as a result of~~
18 ~~domestic violence.~~
- 19 ~~(5) Obtaining psychological counseling related to~~
20 ~~experiences of domestic violence.~~
- 21 ~~(6) Participating in safety planning and other actions~~
22 ~~to increase safety from future domestic violence,~~
23 ~~including temporary or permanent relocation.~~
- 24 ~~(7) Participating in any other activity necessitated by~~
25 ~~domestic violence that must be undertaken during the~~
26 ~~hours of employment involved.~~
- 27 ~~(e) An eligible employee may use any accrued paid~~
28 ~~vacation leave, personal leave, or compensatory time off~~
29 ~~for all or any part of the 15-day leave period provided~~
30 ~~under this section.~~
- 31 ~~(f) An eligible employee shall provide reasonable~~
32 ~~advance notice of the eligible employee’s intention to~~
33 ~~take leave under the provisions of this section.~~
- 34 ~~(g) The employee shall make a reasonable effort to~~
35 ~~schedule treatment and legal proceedings so as not to~~
36 ~~disrupt unduly the operations of the employer, subject to~~
37 ~~the approval of the health care provider of the employee~~
38 ~~or officials involved in pending legal matters.~~
- 39 ~~(h) An employer may require certification of a request~~
40 ~~for leave under the provisions of this section. The~~



1 certification may be provided by law enforcement
2 personnel or legal records. The eligible employee shall
3 provide, in a timely manner, a copy of the certification to
4 the employer.

5 (i) Certification shall be sufficient in the form of any
6 of the following:

7 (1) Police report indicating that the employee was a
8 victim of domestic violence.

9 (2) A court order protecting or separating the
10 employee from the perpetrator of an act of domestic
11 violence against the employee.

12 (3) Documentation from a medical professional,
13 domestic violence advocate, health care provider, or
14 counselor that the employee is undergoing treatment for
15 physical or mental injuries or abuse resulting in
16 victimization from an act of domestic violence.

17 (j) To the extent allowed by law, employers shall
18 maintain the confidentiality of any employee requesting
19 leave under this section.

20 (k) Any eligible employee who takes leave shall, upon
21 returning from leave, be entitled to either of the
22 following:

23 (1) Restoration by the employer to the position of
24 employment held by the employee when leave
25 commenced.

26 (2) Restoration to an equivalent position with
27 equivalent employment benefits, pay, and other terms
28 and conditions of employment.

29 (l) The taking of leave shall not result in the loss of any
30 employment benefits accrued prior to the date on which
31 the leave commenced.

32 (m) Nothing in this section shall be construed to
33 entitle any restored employee to either of the following:

34 (1) The accrual of any seniority or employment
35 benefits during any period of leave.

36 (2) Any right, benefit, or position of employment
37 other than any right, benefit, or position to which the
38 employee would have been entitled had the employee
39 not taken the leave.



1 ~~(n) Nothing in this section shall be construed to~~
2 ~~prohibit any employer from requiring any employee on~~
3 ~~leave to report periodically to the employer on the status~~
4 ~~and intention of the employee to return to work.~~

5 ~~(o) During any period when the eligible employee~~
6 ~~takes leave, the employer shall maintain coverage under~~
7 ~~any group health plan for the duration of the leave at the~~
8 ~~same level and under the same conditions that would~~
9 ~~have been provided if the employee had continued in~~
10 ~~employment continuously for the duration of the leave.~~
11 ~~However, the employer may recover the premium that~~
12 ~~the employer paid for maintaining coverage for the~~
13 ~~employee under the group health plan during any period~~
14 ~~of unpaid leave if the employee fails to do either of the~~
15 ~~following:~~

16 ~~(1) Return from leave after the period of leave to~~
17 ~~which the employee is entitled has expired.~~

18 ~~(2) Return to work for a reason other than~~
19 ~~continuance or recurrence of domestic or repeat violence~~
20 ~~or other circumstances beyond the control of the~~
21 ~~employee.~~

22 ~~(p) An employer shall not interfere with, restrain, or~~
23 ~~deny the exercise of or the attempt to exercise any right~~
24 ~~provided under this section.~~

25 ~~(q) An employer shall not discharge or in any other~~
26 ~~manner discriminate against an individual for opposing~~
27 ~~any practice made unlawful by this section.~~

28 ~~(r) (1) Any employer who violates the provisions of~~
29 ~~this section shall be liable for damages equal to any wages,~~
30 ~~salary, employment benefits, or other compensation~~
31 ~~denied to or lost by an eligible employee by reason of the~~
32 ~~violation.~~

33 ~~(2) Any employer who violates the provisions of this~~
34 ~~section shall be liable for damages equal to any actual~~
35 ~~monetary losses sustained by the employee as a direct~~
36 ~~result of the violation up to 15 days of wages or salary for~~
37 ~~the employee.~~

38 ~~(3) Any employer who violates the provisions of this~~
39 ~~section shall be liable for such equitable relief as may be~~



1 appropriate, including employment, reinstatement, and
2 promotion.

3 (s) (1) Legal action to recover the damages or
4 equitable relief under this section may be maintained by
5 an employee against any employer in any state or federal
6 court of competent jurisdiction by any eligible employee.

7 (2) The court in such an action shall, in addition to any
8 judgment awarded to the plaintiff, require the defendant
9 to pay to the plaintiff reasonable attorney's fees,
10 reasonable expert witness fees, and other costs of the
11 action.

12 (t) An action may be brought under the provisions of
13 this section not later than two years after the date of the
14 last event constituting the alleged violation for which the
15 action is brought.

16 *SEC. 2. Section 230 of the Labor Code is amended to*
17 *read:*

18 230. (a) No employer shall discharge or in any
19 manner discriminate against an employee for taking time
20 off to serve as required by law on an inquest jury or trial
21 jury, if the employee, prior to taking the time off, gives
22 reasonable notice to the employer that he or she is
23 required to serve.

24 (b) No employer shall discharge or in any manner
25 discriminate or retaliate against an employee, including,
26 but not limited to, an employee who is a victim of a crime,
27 for taking time off to appear in court to comply with a
28 subpoena or other court order as a witness in any judicial
29 proceeding.

30 (c) No employer shall discharge or in any manner
31 discriminate or retaliate against an employee who is a
32 victim of domestic violence as defined in Section 6211 of
33 the Family Code for taking time off from work to *attend*
34 *to any of the following:*

35 (1) *To seek medical attention for, or to recover from,*
36 *injuries caused by domestic violence.*

37 (2) *To obtain or attempt to obtain any relief,*
38 *including, but not limited to, a temporary restraining*
39 *order, restraining order, or other injunctive relief, to help*



1 ensure the health, safety, or welfare of a domestic
2 violence victim or his or her child.

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

6 (4) *To obtain psychological counseling related to an
7 experience of domestic violence.*

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

11 (d) (1) As a condition of taking time off for a purpose
12 set forth in subdivision (c), the employee shall give the
13 employer reasonable *advance* notice ~~that he or she is~~
14 ~~required to appear in court unless an unscheduled or~~
15 ~~emergency court appearance is required for the health,~~
16 ~~safety, or welfare of the domestic violence victim or his~~
17 ~~or her child.~~ *of the employee's intention to take time off,*
18 *unless the advance notice is not feasible.*

19 (2) When an unscheduled ~~or emergency court~~
20 ~~appearance is required~~ *absence occurs,* the employer
21 shall not take any action against the employee if the
22 employee, within a reasonable time after the ~~appearance~~
23 *absence,* provides a *certification to the employer.*
24 *Certification shall be sufficient in the form of any of the*
25 *following:*

26 (A) *A police report indicating that the employee was*
27 *a victim of domestic violence.*

28 (B) *A court order protecting or separating the*
29 *employee from the perpetrator of an act of domestic*
30 *violence, or other evidence from the court or prosecuting*
31 *attorney that he or she has the employee appeared in*
32 *court.*

33 (C) *Documentation from a medical professional,*
34 *domestic violence advocate, health care provider, or*
35 *counselor that the employee was undergoing treatment*
36 *for physical or mental injuries or abuse resulting in*
37 *victimization from an act of domestic violence.*

38 (3) *To the extent allowed by law, employers shall*
39 *maintain the confidentiality of any employee requesting*
40 *leave under subdivision (c).*



1 (e) Any employee who is discharged, threatened with
2 discharge, demoted, suspended, or in any other manner
3 discriminated or retaliated against in the terms and
4 conditions of employment by his or her employer because
5 the employee has taken time off for a purpose set forth in
6 subdivision (a), (b), or (c) shall be entitled to
7 reinstatement and reimbursement for lost wages and
8 work benefits caused by the acts of the employer. Any
9 employer who willfully refuses to rehire, promote, or
10 otherwise restore an employee or former employee who
11 has been determined to be eligible for rehiring or
12 promotion by a grievance procedure or hearing
13 authorized by law is guilty of a misdemeanor.

14 (f) (1) Any employee who is discharged, threatened
15 with discharge, demoted, suspended, or in any other
16 manner discriminated or retaliated against in the terms
17 and conditions of employment by his or her employer
18 because the employee has exercised his or her rights as set
19 forth in subdivision (a), (b), or (c) may file a complaint
20 with the Division of Labor Standards Enforcement of the
21 Department of Industrial Relations pursuant to Section
22 98.7.

23 (2) Notwithstanding any time limitation in Section
24 98.7, an employee filing a complaint with the division
25 based upon a violation of subdivision (c) shall have one
26 year from the date of occurrence of the violation to file
27 his or her complaint.

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

36 *SEC. 3. No reimbursement is required by this act*
37 *pursuant to Section 6 of Article XIII B of the California*
38 *Constitution because the only costs that may be incurred*
39 *by a local agency or school district will be incurred*
40 *because this act creates a new crime or infraction,*



1 *eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section*
3 *17556 of the Government Code, or changes the definition*
4 *of a crime within the meaning of Section 6 of Article*
5 *XIII B of the California Constitution.*

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