

AMENDED IN ASSEMBLY AUGUST 29, 2000

AMENDED IN SENATE MAY 18, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 1149**

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**Introduced by Senator ~~Speier~~ *Hayden***  
(~~Coauthors: Assembly Members Knox and Kuehl~~)

February 26, 1999

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An act to amend Section 12945.2 of, ~~and to add Section 12945.3 to,~~ the Government Code, relating to employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, as amended, ~~Speier~~ *Hayden*. Family care and medical leave: employers.

Existing law makes it an unlawful employment practice for any employer, *as defined*, to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. ~~Existing law exempts certain employers from that provision by providing that it is not an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs less than 50 employees within 75 miles of the worksite where that employee is employed. Existing law defines "employer," for purposes of those requests, as any person who directly employs 50 or more persons to perform services for a wage or salary. Existing law, *as defined*, in~~

*connection with the birth or adoption or serious health condition of the employee's child, or to care for a parent or spouse who has a serious health condition, or because of the employee's own serious health condition, as defined.*

*This bill would also provide that an employee may take family care and medical leave to care for a grandparent or sibling, or domestic partner, as defined, who has a serious health condition.*

*Existing law, for purposes of these provisions, defines "child" as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or an adult dependent child.*

~~This bill would instead provide that exemption for employers that employ less than 20 employees within 75 miles of the worksite where that employee is employed and would define "employer" as any person who directly employs 20 or more persons to perform services for a wage or salary. This bill, in addition, would define "child" as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.~~

~~Existing law also prohibits any employer, because of the pregnancy, childbirth, or related medical condition of any female employee, to, among other things, refuse to appoint her, to refuse to permit her to receive the same benefits or privileges of employment granted by that employer to other persons not so affected who are similar in their ability or inability to work, as specified, or to refuse to permit her to take a leave on account of pregnancy for a reasonable period of time not to exceed 4 months, as specified.~~

~~This bill would require that, in addition to the responsibilities imposed on employers with respect to family care and medical leave and leave for pregnancy, childbirth, or a related medical condition, that the Department of Fair Employment and Housing (department) make information sheets available to employers upon the request of an employer.~~

~~This bill would require each employer to distribute the information sheets provided by the department to its employees, unless the employer provides information to its employees relating to family care and medical leave and~~



~~pregnancy disability leave that contains, among other things, the definition of family care and medical leave and pregnancy and disability leave entitlements, and information about the right to take leave to care for the serious health condition of a child, spouse, or parent, or to bond with a newborn, adopted, or foster child. Each employer would also be required to give its employees reasonable advance notice of any requirements it adopts pertaining to family care and medical leave and pregnancy disability leave, including an employee's rights, duties, and obligations when taking a leave, and an explanation of any employer attendance or leave policies and how those requirements comply with the family care and medical leave and pregnancy disability leave requirements. If an employer fails to provide that information, the employer would be precluded from taking certain actions against the employee, as specified.~~

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 12945.2 of the Government  
 2 Code is amended to read:  
 3 12945.2. (a) Except as provided in subdivision (b), it  
 4 shall be an unlawful employment practice for any  
 5 employer, as defined in paragraph (2) of subdivision (c),  
 6 to refuse to grant a request by any employee with more  
 7 than 12 months of service with the employer, and who has  
 8 at least 1,250 hours of service with the employer during  
 9 the previous 12-month period, to take up to a total of 12  
 10 workweeks in any 12-month period for family care and  
 11 medical leave. Family care and medical leave requested  
 12 pursuant to this subdivision shall not be deemed to have  
 13 been granted unless the employer provides the  
 14 employee, upon granting the leave request, a guarantee  
 15 of employment in the same or a comparable position  
 16 upon the termination of the leave. The commission shall  
 17 adopt a regulation specifying the elements of a  
 18 reasonable request.



1 (b) Notwithstanding subdivision (a), it shall not be an  
2 unlawful employment practice for an employer to refuse  
3 to grant a request for family care and medical leave by an  
4 employee if the employer employs less than ~~20~~ 50  
5 employees within 75 miles of the worksite where that  
6 employee is employed.

7 (c) For purposes of this section:

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

11 (2) "*Domestic partners*" means two adult persons in a  
12 committed relationship of mutual caring where all of the  
13 following conditions apply:

14 (A) Both persons share a common residence.

15 (B) Both persons agree to be responsible for each  
16 other's basic living expenses during the domestic  
17 partnership.

18 (C) Neither person is married or a member of another  
19 domestic partnership.

20 (D) Both persons are at least 18 years of age.

21 (E) Both persons file a Declaration of Domestic  
22 Partnership with the employer or a municipal or state  
23 domestic partnership registry.

24 (3) "Employer" means either of the following:

25 (A) Any person who directly employs ~~20~~ 50 or more  
26 persons to perform services for a wage or salary.

27 (B) The state, cities, and any other political or civil  
28 subdivision of the state.

29 ~~(3)~~

30 (4) "Family care and medical leave" means any of the  
31 following:

32 (A) Leave for reason of the birth of a child of the  
33 employee, the placement of a child with an employee in  
34 connection with the adoption or foster care of the child  
35 by the employee, or the serious health condition of a child  
36 of the employee.

37 (B) Leave to care for a parent ~~or a spouse~~  
38 grandparent, sibling, spouse, or domestic partner who has  
39 a serious health condition.



1 (C) Leave because of an employee’s own serious  
2 health condition that makes the employee unable to  
3 perform the functions of the position of that employee,  
4 except for leave taken for disability on account of  
5 pregnancy, childbirth, or related medical conditions.

6 ~~(4)~~

7 (5) “Employment in the same or a comparable  
8 position” means employment in a position that has the  
9 same or similar duties and pay that can be performed at  
10 the same or similar geographic location as the position  
11 held prior to the leave.

12 ~~(5)~~

13 (6) “FMLA” means the federal Family and Medical  
14 Leave Act of 1993 (P.L. 103-3).

15 ~~(6)~~

16 (7) “Health care provider” means any of the following:

17 (A) An individual holding either a physician’s and  
18 surgeon’s certificate issued pursuant to Article 4  
19 (commencing with Section 2080) of Chapter 5 of Division  
20 2 of the Business and Professions Code, an osteopathic  
21 physician’s and surgeon’s certificate issued pursuant to  
22 Article 4.5 (commencing with Section 2099.5) of Chapter  
23 5 of Division 2 of the Business and Professions Code, or an  
24 individual duly licensed as a physician, surgeon, or  
25 osteopathic physician or surgeon in another state or  
26 jurisdiction, who directly treats or supervises the  
27 treatment of the serious health condition.

28 (B) Any other person determined by the United States  
29 Secretary of Labor to be capable of providing health care  
30 services under the FMLA.

31 ~~(7)~~

32 (8) “Parent” means a biological, foster, or adoptive  
33 parent, a stepparent, a legal guardian, or other person  
34 who stood in loco parentis to the employee when the  
35 employee was a child.

36 ~~(8)~~

37 (9) “Serious health condition” means an illness, injury,  
38 impairment, or physical or mental condition that involves  
39 either of the following:



1 (A) Inpatient care in a hospital, hospice, or residential  
2 health care facility.

3 (B) Continuing treatment or continuing supervision  
4 by a health care provider.

5 (d) An employer shall not be required to pay an  
6 employee for any leave taken pursuant to subdivision (a),  
7 except as required by subdivision (e).

8 (e) An employee taking a leave permitted by  
9 subdivision (a) may elect, or an employer may require  
10 the employee, to substitute for leave allowed under  
11 subdivision (a) any of the employee's accrued vacation  
12 leave or other accrued time off during this period or any  
13 other paid or unpaid time off negotiated with the  
14 employer. If an employee takes a leave because of the  
15 employee's own serious health condition, the employee  
16 may also elect, or the employer may also require the  
17 employee, to substitute accrued sick leave during the  
18 period of the leave. However, an employee shall not use  
19 sick leave during a period of leave in connection with the  
20 birth, adoption, or foster care of a child, or to care for a  
21 child, parent, or spouse with a serious health condition,  
22 unless mutually agreed to by the employer and the  
23 employee.

24 (f) (1) During any period that an eligible employee  
25 takes leave pursuant to subdivision (a) or takes leave that  
26 qualifies as leave taken under the FMLA, the employer  
27 shall maintain and pay for coverage under a "group  
28 health plan," as defined in Section 5000(b)(1) of the  
29 Internal Revenue Code of 1986, for the duration of the  
30 leave, not to exceed 12 workweeks in a 12-month period,  
31 commencing on the date leave taken under the FMLA  
32 commences, at the level and under the conditions  
33 coverage would have been provided if the employee had  
34 continued in employment continuously for the duration  
35 of the leave. Nothing in the preceding sentence shall  
36 preclude an employer from maintaining and paying for  
37 coverage under a "group health plan" beyond 12  
38 workweeks. An employer may recover the premium that  
39 the employer paid as required by this subdivision for



1 maintaining coverage for the employee under the group  
2 health plan if both of the following conditions occur:

3 (A) The employee fails to return from leave after the  
4 period of leave to which the employee is entitled has  
5 expired.

6 (B) The employee's failure to return from leave is for  
7 a reason other than the continuation, recurrence, or onset  
8 of a serious health condition that entitles the employee to  
9 leave under subdivision (a) or other circumstances  
10 beyond the control of the employee.

11 (2) Any employee taking leave pursuant to  
12 subdivision (a) shall continue to be entitled to participate  
13 in employee health plans for any period during which  
14 coverage is not provided by the employer under  
15 paragraph (1), employee benefit plans, including life,  
16 short-term, or long-term disability or accident insurance,  
17 pension and retirement plans, and supplemental  
18 unemployment benefit plans to the same extent and  
19 under the same conditions as apply to an unpaid leave  
20 taken for any purpose other than those described in  
21 subdivision (a). In the absence of these conditions an  
22 employee shall continue to be entitled to participate in  
23 these plans and, in the case of health and welfare  
24 employee benefit plans, including life, short-term, or  
25 long-term disability or accident insurance, or other  
26 similar plans, the employer may, at his or her discretion,  
27 require the employee to pay premiums, at the group rate,  
28 during the period of leave not covered by any accrued  
29 vacation leave, or other accrued time off, or any other  
30 paid or unpaid time off negotiated with the employer, as  
31 a condition of continued coverage during the leave  
32 period. However, the nonpayment of premiums by an  
33 employee shall not constitute a break in service, for  
34 purposes of longevity, seniority under any collective  
35 bargaining agreement, or any employee benefit plan.

36 For purposes of pension and retirement plans, an  
37 employer shall not be required to make plan payments  
38 for an employee during the leave period, and the leave  
39 period shall not be required to be counted for purposes  
40 of time accrued under the plan. However, an employee



1 covered by a pension plan may continue to make  
2 contributions in accordance with the terms of the plan  
3 during the period of the leave.

4 (g) During a family care and medical leave period, the  
5 employee shall retain employee status with the employer,  
6 and the leave shall not constitute a break in service, for  
7 purposes of longevity, seniority under any collective  
8 bargaining agreement, or any employee benefit plan. An  
9 employee returning from leave shall return with no less  
10 seniority than the employee had when the leave  
11 commenced, for purposes of layoff, recall, promotion, job  
12 assignment, and seniority-related benefits such as  
13 vacation.

14 (h) If the employee's need for a leave pursuant to this  
15 section is foreseeable, the employee shall provide the  
16 employer with reasonable advance notice of the need for  
17 the leave.

18 (i) If the employee's need for leave pursuant to this  
19 section is foreseeable due to a planned medical treatment  
20 or supervision, the employee shall make a reasonable  
21 effort to schedule the treatment or supervision to avoid  
22 disruption to the operations of the employer, subject to  
23 the approval of the health care provider of the individual  
24 requiring the treatment or supervision.

25 (j) (1) An employer may require that an employee's  
26 request for leave to care for ~~a child, a spouse, or a parent~~  
27 *an individual other than the employee* who has a serious  
28 health condition be supported by a certification issued by  
29 the health care provider of the individual requiring care.  
30 That certification shall be sufficient if it includes all of the  
31 following:

32 (A) The date on which the serious health condition  
33 commenced.

34 (B) The probable duration of the condition.

35 (C) An estimate of the amount of time that the health  
36 care provider believes the employee needs to care for the  
37 individual requiring the care.

38 (D) A statement that the serious health condition  
39 warrants the participation of a family member to provide



1 care during a period of the treatment or supervision of  
2 the individual requiring care.

3 (2) Upon expiration of the time estimated by the  
4 health care provider in subparagraph (C) of paragraph  
5 (1), the employer may require the employee to obtain  
6 recertification, in accordance with the procedure  
7 provided in paragraph (1), if additional leave is required.

8 (k) (1) An employer may require that an employee's  
9 request for leave because of the employee's own serious  
10 health condition be supported by a certification issued by  
11 his or her health care provider. That certification shall be  
12 sufficient if it includes all of the following:

13 (A) The date on which the serious health condition  
14 commenced.

15 (B) The probable duration of the condition.

16 (C) A statement that, due to the serious health  
17 condition, the employee is unable to perform the function  
18 of his or her position.

19 (2) The employer may require that the employee  
20 obtain subsequent recertification regarding the  
21 employee's serious health condition on a reasonable basis,  
22 in accordance with the procedure provided in paragraph  
23 (1), if additional leave is required.

24 (3) (A) If the employer has reason to doubt the  
25 validity of the certification provided pursuant to this  
26 section, the employer may require, at the employer's  
27 expense, that the employee obtain the opinion of a second  
28 health care provider, designated or approved by the  
29 employer, concerning any information certified under  
30 paragraph (1).

31 (B) The health care provider designated or approved  
32 under subparagraph (A) shall not be employed on a  
33 regular basis by the employer.

34 (C) If the second opinion described in subparagraph  
35 (A) differs from the opinion in the original certification,  
36 the employer may require, at the employer's expense,  
37 that the employee obtain the opinion of a third health  
38 care provider, designated or approved jointly by the  
39 employer and the employee, concerning the information  
40 certified under paragraph (1).



1 (D) The opinion of the third health care provider  
2 concerning the information certified under paragraph  
3 (1) shall be considered to be final and shall be binding on  
4 the employer and the employee.

5 (4) As a condition of an employee's return from leave  
6 taken because of the employee's own serious health  
7 condition, the employer may have a uniformly applied  
8 practice or policy that requires the employee to obtain  
9 certification from his or her health care provider that the  
10 employee is able to resume work. Nothing in this  
11 paragraph shall supersede a valid collective bargaining  
12 agreement that governs the return to work of that  
13 employee.

14 (I) It shall be an unlawful employment practice for an  
15 employer to refuse to hire, or to discharge, fine, suspend,  
16 expel, or discriminate against, any individual because of  
17 any of the following:

18 (1) An individual's exercise of the right to family care  
19 and medical leave provided by subdivision (a).

20 (2) An individual's giving information or testimony as  
21 to his or her own family care and medical leave, or  
22 another person's family care and medical leave, in any  
23 inquiry or proceeding related to rights guaranteed under  
24 this section.

25 (m) An employer shall take all reasonable steps  
26 necessary to ensure that employees are afforded all family  
27 care and medical leave entitlements provided in this  
28 section and to prevent any unlawful employment actions  
29 from being taken against any applicant or employee in  
30 violation of subdivision (I).

31 (n) The provisions of this section shall be construed as  
32 separate and distinct from those of Section 12945.

33 (o) Leave provided for pursuant to this section may be  
34 taken in one or more periods. The 12-month period  
35 during which 12 workweeks of leave may be taken under  
36 this section shall run concurrently with the 12-month  
37 period under the FMLA, and shall commence the date  
38 leave taken under the FMLA commences.

39 (p) If both parents entitled to leave under subdivision  
40 (a) are employed by the same employer, the employer



1 shall not be required to grant leave in connection with the  
2 birth, adoption, or foster care of a child that would allow  
3 the parents family care and medical leave totaling more  
4 than the amount specified in subdivision (a).

5 (q) (1) Notwithstanding subdivision (a), an  
6 employer may refuse to reinstate an employee returning  
7 from leave to the same or a comparable position if all of  
8 the following apply:

9 (A) The employee is a salaried employee who is  
10 among the highest paid 10 percent of the employer's  
11 employees who are employed within 75 miles of the  
12 worksite at which that employee is employed.

13 (B) The refusal is necessary to prevent substantial and  
14 grievous economic injury to the operations of the  
15 employer.

16 (C) The employer notifies the employee of the intent  
17 to refuse reinstatement at the time the employer  
18 determines the refusal is necessary under subparagraph  
19 (B).

20 (2) If the leave has already commenced, the employer  
21 shall give the employee a reasonable opportunity to  
22 return to work following the notice prescribed by  
23 subparagraph (C).

24 (r) Leave taken by an employee pursuant to this  
25 section shall run concurrently with leave taken pursuant  
26 to the FMLA, except for any leave taken under the FMLA  
27 for disability on account of pregnancy, childbirth, or  
28 related medical conditions. The aggregate amount of  
29 leave taken under this section or the FMLA, or both,  
30 except for leave taken for disability on account of  
31 pregnancy, childbirth, or related medical conditions,  
32 shall not exceed 12 workweeks in a 12-month period. An  
33 employee is entitled to take, in addition to the leave  
34 provided for under this section and the FMLA, the leave  
35 provided for in Section 12945, if the employee is otherwise  
36 qualified for that leave.

37 ~~SEC. 2. Section 12945.3 is added to the Government~~  
38 ~~Code, to read:~~

39 ~~12945.3. (a) For purposes of this section:~~



1 ~~(1) “Employer” means an employer as defined in~~  
2 ~~paragraph (2) of subdivision (c) of Section 12945.2.~~

3 ~~(2) “PDL” means pregnancy disability leave, as~~  
4 ~~established pursuant to Section 12945.~~

5 ~~(b) The department shall make information sheets on~~  
6 ~~the rights of employees to take family care and medical~~  
7 ~~leave under Section 12945.2 and on PDL entitlements~~  
8 ~~available to employers for reproduction and distribution~~  
9 ~~by employers to their employees. The department shall~~  
10 ~~provide one copy of each information sheet to an~~  
11 ~~employer upon request. The information sheets shall be~~  
12 ~~available at each office of the department, and shall be~~  
13 ~~mailed upon request if the request includes a~~  
14 ~~self-addressed envelope with postage affixed. Multiple~~  
15 ~~copies of the information sheets shall be made available~~  
16 ~~through the Office of Documents and Publications of the~~  
17 ~~Department of General Services.~~

18 ~~(e) In addition to the duties imposed on employers~~  
19 ~~pursuant to subdivision (m) of Section 12945.2, each~~  
20 ~~employer shall ensure that its workplace is free from~~  
21 ~~employment practices that are unlawful under Section~~  
22 ~~12945.2 and any rules or regulations adopted pursuant to~~  
23 ~~Section 12945.2 by implementing all of the following~~  
24 ~~minimum requirements:~~

25 ~~(1) Each employer shall obtain the information sheets~~  
26 ~~on Section 12945.2 and PDL entitlements from the~~  
27 ~~department. Each employer shall distribute copies of the~~  
28 ~~information sheets to its employees, unless the employer~~  
29 ~~provides information to its employees that contains, at a~~  
30 ~~minimum, the following:~~

31 ~~(A) The definition of family care and medical leave~~  
32 ~~under Section 12945.2 and the entitlements to PDL under~~  
33 ~~Section 12945.~~

34 ~~(B) The right of an eligible employee under Section~~  
35 ~~12945.2 to take leave of up to 12 weeks, with the right to~~  
36 ~~reinstatement and continued health care coverage~~  
37 ~~during leave.~~

38 ~~(C) The right of an eligible employee under Section~~  
39 ~~12945.2 to take leave to care for one’s own serious health~~



1 ~~condition or the serious health condition of a child,~~  
2 ~~spouse, or parent.~~

3 ~~(D) The right of an eligible employee to take leave~~  
4 ~~under Section 12945.2 to bond with a newborn, adopted,~~  
5 ~~or foster child.~~

6 ~~(E) The right of an eligible employee to take leave~~  
7 ~~under Section 12945.2 on an intermittent or reduced~~  
8 ~~schedule basis, if medically necessary.~~

9 ~~(F) The right of an eligible employee under Section~~  
10 ~~12945.2 to use sick, vacation, personal, or other paid leave~~  
11 ~~while on leave under Section 12945.2.~~

12 ~~(G) The right of an eligible employee who is disabled~~  
13 ~~by pregnancy, childbirth, or a related medical condition~~  
14 ~~to take PDL of up to four months pursuant to Section~~  
15 ~~12945, with the right to reinstatement, even if she is not~~  
16 ~~otherwise eligible for leave under Section 12945.2.~~

17 ~~(H) A complete explanation in writing of an~~  
18 ~~employee's rights, duties, and obligations when asserting~~  
19 ~~his or her right to leave under Sections 12945 and 12945.2.~~

20 ~~(I) The internal complaint process made available by~~  
21 ~~the employer to the employee.~~

22 ~~(J) The legal remedies and complaint process~~  
23 ~~available to employees through the department and~~  
24 ~~commission with regard to disputes arising under Section~~  
25 ~~12945, regarding PDL requests, or Section 12945.2.~~

26 ~~(K) Directions on how employees may contact the~~  
27 ~~department and commission.~~

28 ~~(L) The prohibitions established by subdivision (f) of~~  
29 ~~Section 12940, subdivision (l) of Section 12945.2, Section~~  
30 ~~19702.3, and Sections 7287.8 and 7297.7 of Title 2 of the~~  
31 ~~California Code of Regulations, against retaliating against~~  
32 ~~any employee and against opposing the practices~~  
33 ~~prohibited by this article or for filing a complaint with, or~~  
34 ~~otherwise participating in an investigation, proceeding,~~  
35 ~~or hearing conducted by, the department or commission.~~

36 ~~(d) Each employer shall deliver the information~~  
37 ~~sheets or information required to be distributed to all~~  
38 ~~employees pursuant to subdivision (e) in a manner that~~  
39 ~~ensures distribution to each employee, such as including~~



1 ~~the information sheets or information with the~~  
2 ~~employee's paycheck.~~  
3 ~~(e) Each employer shall provide its employees with~~  
4 ~~reasonable advance notice of any requirements that it~~  
5 ~~adopts pertaining to family care and medical leave or~~  
6 ~~PDL, including any requirements relating to an~~  
7 ~~employee's rights, duties, and obligations when taking a~~  
8 ~~leave and an explanation of any employer attendance or~~  
9 ~~leave policies, or both, and how those policies operate in~~  
10 ~~compliance with Section 12945.2 and PDL requirements.~~  
11 ~~If an employer fails to provide this information, the~~  
12 ~~employer may not take any adverse action against the~~  
13 ~~employee or deny the employee leave for failing to~~  
14 ~~provide the employer with advance notice of the need to~~  
15 ~~take the leave.~~

