

Assembly Bill No. 2340

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

Passed the Senate August 20, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 230.5 to the Labor Code, relating to employee rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2340, Monning. Employee's right to bereavement leave.

Existing law provides employees with the right to take time off work without discharge or discrimination for a number of reasons.

This bill would add the right to inquire about, request, and take time off for bereavement leave. The provisions of the bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.

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

SECTION 1. Section 230.5 is added to the Labor Code, to read:

230.5. (a) An employer shall not discharge, discipline, or in any manner discriminate against an employee for inquiring about, requesting, or taking up to three days of bereavement leave off upon the death of a spouse, child, parent, sibling, grandparent, grandchild, or domestic partner.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) "Employee" means a person employed by the employer for at least 60 days prior to the commencement of the leave.

(3) "Parent" has the same meaning as defined in paragraph (3) of subdivision (b) of Section 233.

(4) "Domestic partner" has the same meaning as defined in Section 297 of the Family Code, who is registered pursuant to Part 2 (commencing with Section 298) of Division 2.5 of the Family Code.

(5) “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(c) The days of bereavement leave need not be consecutive.

(d) The bereavement leave must be completed within 13 months of the date of death of the person listed in subdivision (a).

(e) The bereavement leave is to be unpaid, except that an employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee.

(f) The employee, if requested by the employer, shall, within 30 days of the leave, provide documentation of the death of the person listed in subdivision (a). “Documentation” includes a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency.

(g) An employee who is discharged, disciplined, or otherwise discriminated against in terms or conditions of employment by his or her employer because the employee has inquired about, requested, or taken bereavement leave pursuant to this section is entitled to reinstatement and to recover actual damages.

(h) An employee who believes he or she has been discharged, disciplined, or in any way discriminated against in violation of this section may take either of the following actions:

(1) The employee may file a complaint with the Division of Labor Standards Enforcement in accordance with Section 98.7.

(2) The employee may bring a civil action for the remedies provided in subdivision (g) in a court of competent jurisdiction. If the employee prevails, the court may award the employee reasonable attorney’s fees.

(i) The rights and remedies of this section are cumulative, nonexclusive, and in addition to any other rights and remedies afforded by contract or other provisions of law.

(j) This section does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave and the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

Approved _____, 2010

Governor