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**AB-2405 Employment: employees: time off.** (2015-2016)

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AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

**ASSEMBLY BILL**

**NO. 2405**

Introduced by Assembly Member Gatto  
(Coauthor: [Assembly Member McCarty](#))

February 19, 2016

An act to amend Section 230.8 of the Labor Code, relating to employment.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2405, as amended, Gatto. Employment: employees: time off.

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, as defined, 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 to find, enroll, or reenroll their child in a school, to participate in school activities, or address emergency situations at school, subject to specified conditions. Existing law requires an employee to use vacation or other paid time off when taking time off under these provisions and authorizes the use of unpaid time off, to the extent made available by the employer.

This bill would require an employer to annually provide an employee at least ~~24~~ 8 hours of paid time off for the purposes of a planned absence under these provisions, except as specified, and would instead authorize an employee to use vacation or paid time off, or use unpaid time off, if available, when taking time off under these provisions.

The bill would provide a remedy to an employee whose request for time off under these provisions is denied by the employer. The bill would require the Labor Commissioner to create a poster listing the protections available to employees and would require an employer to post it at the workplace, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 230.8 of the Labor Code is amended to read:

**230.8.** (a) (1) An employer who employs 25 or more employees working at the same location shall not discharge or in any way discriminate against an employee who is a parent of one or more children of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities:

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

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

(2) If more than one parent of a child is employed by the same employer at the same worksite, the entitlement under paragraph (1) of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph (1) only if he or she obtains the employer's approval for the requested time off.

(b) (1) The employee may utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement entered into before January 1, 1995, and in effect on that date. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer.

(2) The employee shall annually be provided at least ~~24~~ **eight** hours of paid time off for the purposes of the planned absence authorized by this section, unless otherwise provided in a collective bargaining agreement entered into before January 1, 2017.

(3) Except as set forth in paragraph (2), the entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition that is agreed to on or after January 1, 1995.

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

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

(d) Any employee who is denied time off under this section, discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in terms and conditions of employment by his or her employer because the employee has taken or requested time off to engage in child-related activities permitted in subdivision (a) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, and appropriate equitable relief. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

(e) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(f) In each workplace of the employer, the employer shall display a poster in a conspicuous place containing all the information specified in paragraph (2) of subdivision (b). The Labor Commissioner shall create a poster containing this information and make it available to employers. The poster shall include all of the following:

(1) An employee is entitled to request and use ~~24~~ **eight** hours of paid time off for their child's school-related activities.

(2) That retaliation or discrimination against an employee who requests paid time off or uses time off, or both, is prohibited and that an employee has the right under this article to file a complaint with the Labor Commissioner against an employer who retaliates or discriminates against the employee.

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

(1) "Parent" means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.

(2) "Child care provider or school emergency" means that an employee's child cannot remain in a school or with a child care provider due to one of the following:

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

(B) Behavioral or discipline problems.

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

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