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SB-579 Employees: time off. (2015-2016)

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Senate Bill No. 579

CHAPTER 802

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

[Approved by Governor October 11, 2015. Filed with Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 579, 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 child 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 with a child care provider as activities for which a parent having custody of a child shall not be discriminated against or discharged, as described above. The bill would define "parent" for these purposes as a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child, thereby extending 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. Existing law defines "sick leave" for these purposes as leave provided for use by the employee during an absence from employment for specified reasons, including, but not limited to, an employee's inability to perform his or her duties due to illness, injury, or a medical condition of the employee. 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, grandchildren, and siblings.

This bill would instead require an employer to permit an employee to use sick leave for the purposes specified in the Healthy Workplaces, Healthy Families Act of 2014, would redefine "sick leave" as leave provided for use by the employee during an absence from employment for these purposes, 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.

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 shall 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. 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.

(2) 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 discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment by his or her employer because the employee has taken 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. 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) 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.

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

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

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

(2) "Family member" has the same meaning as defined in Section 245.5.

(3) (A) "Sick leave" means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the reasons specified in subdivision (a) of Section 246.5.

(B) "Sick leave" does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce this section in accordance with Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

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