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AB-1949 Employees: bereavement leave. (2021-2022)

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Assembly Bill No. 1949

CHAPTER 767

An act to amend Sections 12945.21 and 19859.3 of, and to add Section 12945.7 to, the Government Code, relating to employment.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1949, Low. Employees: bereavement leave.

Existing law, commonly known as the California Family Rights Act, which is a part of the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave, as specified.

This bill would additionally make it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to 5 days of bereavement leave upon the death of a family member, as defined. The bill would require that leave be completed within 3 months of the date of death. The bill would require that leave be taken pursuant to any existing bereavement leave policy of the employer. Under the bill, in the absence of an existing policy, the bereavement leave may be unpaid. However, the bill would authorize an employee to use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave.

This bill would require, if an existing leave policy provides for less than 5 days of bereavement leave, a total of at least 5 days of bereavement leave for the employee, as prescribed. The bill would make it an unlawful employment practice for an employer to engage in specified acts of discrimination, interference, or retaliation relating to an individual's exercise of rights under the bill. The bill would require the employer to maintain employee confidentiality relating to bereavement leave, as specified. The bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for prescribed bereavement leave and other specified working conditions.

Existing law requires the Department of Fair Employment and Housing to create a small employer family leave mediation pilot program for alleged violations of specified family care and medical leave provisions, applicable to employers with between 5 and 19 employees.

This bill would require the Department of Fair Employment and Housing to expand the program to include mediation for alleged violations of these provisions.

Existing law grants specified permanent employees of the state up to 3 days of bereavement leave, with up to 2 additional days of bereavement leave upon request if the death is out of state. Existing law specifies that these 2 additional days are to be without pay or are to be charged against existing sick leave credits.

This bill would recast those provisions to specify that the first 3 days of bereavement leave are to be paid leave, and to remove the condition that the death be out of state for the additional 2 days.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

SECTION 1. Section 12945.7 is added to the Government Code, to read:

12945.7. (a) As used in this section:

(1) (A) "Employee" means a person employed by the employer for at least 30 days prior to the commencement of the leave.

(B) "Employee" does not include a person who is covered by Section 19859.3.

(2) "Employer" means either of the following:

(A) A person who employs five or more persons to perform services for a wage or salary.

(B) The state and any political or civil subdivision of the state, including, but not limited to, cities and counties.

(3) "Family member" means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in Section 12945.2.

(b) It shall be an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member.

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

(d) The bereavement leave shall be completed within three months of the date of death of the family member.

(e) (1) The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer.

(2) If there is no existing bereavement leave policy, the bereavement leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(3) If an existing leave policy provides for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(4) If an existing leave policy provides for less than five days of unpaid bereavement leave, the employee shall be entitled to no less than five days of unpaid bereavement leave, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

(f) The employee, if requested by the employer, within 30 days of the first day of the leave, shall provide documentation of the death of the family member. As used in this subdivision, "documentation" includes, but is not limited to, 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 governmental agency.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to bereavement leave provided by subdivision (b).

(2) An individual's giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to rights guaranteed under this section.

(h) It shall be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(i) The employer shall maintain the confidentiality of any employee requesting leave under this section. Any documentation provided to the employer pursuant to subdivision (f) or subdivision (g) shall be maintained as confidential and shall not be disclosed except to internal personnel or counsel, as necessary, or as required by law.

(j) An employee's right to leave under this section shall be construed as separate and distinct from any right under Section 12945.2.

(k) The section does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by this section and for 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 above the state minimum wage.

SEC. 2. Section 12945.21 of the Government Code is amended to read:

12945.21. (a) The department shall create a small employer family leave mediation pilot program for employers with between 5 and 19 employees. Under the pilot program, when an employee requests an immediate right to sue alleging a violation of Section 12945.2 or Section 12945.7 by an employer having between 5 and 19 employees, the department shall notify the employee in writing of the requirement for mediation prior to filing a civil action if mediation is requested by the employer or employee. The employee shall contact the department's dispute resolution division prior to filing a civil action.

(b) (1) Under the pilot program, the employee shall contact the department's dispute resolution division prior to filing a civil action in the manner specified by the department. The employee shall also indicate whether they are requesting mediation.

(2) Upon contacting the dispute resolution division regarding the intent to pursue a legal action for a violation of Section 12945.2 or Section 12945.7 by an employer having between 5 and 19 employees, the department shall notify all named respondents of the alleged violation and the requirement for mediation, if mediation is requested by the employee or employer, in writing.

(3) The department shall terminate its activity if neither the employee nor the employer requests mediation within 30 days of receipt by all named respondents of the notification specified in paragraph (2).

(4) If the department receives a request for mediation from the employee or employer within 30 days of receipt by all named respondents of the notification specified in paragraph (2), the department shall initiate the mediation within 60 days of the department's receipt of the request or the receipt of the notification by all named respondents, whichever is later.

(5) Once the mediation has been initiated, no later than seven days before the mediation date, the mediator shall notify the employee of their right to request information pursuant to Sections 226 and 1198.5 of the Labor Code. The mediator shall also help facilitate any other reasonable requests for information that may be necessary for either party to present their claim in mediation.

(c) (1) The employee shall not pursue any civil action under Section 12945.2 or Section 12945.7 unless the mediation is not initiated by the department within the time period specified in subdivision (b) or until the mediation is complete or the mediation is deemed unsuccessful.

(2) The statute of limitations applicable to the employee's claim, including for all related claims under Section 12945.2 or Section 12945.7 and not under Section 12945.2 or Section 12945.7, shall be tolled from the date the employee contacts the department's dispute resolution division regarding the intent to pursue a legal action until the mediation is complete or the mediation is deemed unsuccessful.

(d) (1) For purposes of this section, the following shall apply:

(2) A mediation is deemed complete when any of the following occur:

(A) Neither the employee nor the employer requests the mediation within 30 days of receipt by all named respondents of the notification or both parties agree not to participate in the mediation.

(B) The employer fails to respond to the notification or mediation request within 30 days of receipt.

(C) The department fails to initiate the mediation within 60 days of the department's receipt of the request for mediation or the receipt by all named respondents of the notification, whichever is later.

(D) The department notifies the parties that it has determined that further mediation would be fruitless, both parties agree that further mediation would be fruitless, one of the parties failed to submit information requested by the other party and deemed by the mediator to be reasonably necessary or fair for the other party to obtain, or the mediator determines that the core facts of the employee's complaint are unrelated to Section 12945.2 or Section 12945.7.

(3) A mediation is unsuccessful if the claim is not resolved within 30 days of the department's initiation of mediation, unless the department notifies the parties that it has determined more time is needed to make the mediation successful.

(e) A respondent or defendant in a civil action that did not receive a notification pursuant to subdivision (b) as a result of the employee's failure to contact the department's alternative dispute resolution division prior to filing a civil action, and who had between 5 and 19 employees at the time that the alleged violation occurred, shall, upon a timely request, be entitled to a stay of any pending civil action or arbitration until mediation is complete or is deemed unsuccessful.

(f) If a request for an immediate right to sue includes other alleged violations under this part, this section shall only apply to the claim alleging a violation of Section 12945.2 or Section 12945.7. Notwithstanding this subdivision, nothing in this section prohibits the parties from voluntarily choosing to mediate all alleged violations.

(g) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3. Section 19859.3 of the Government Code is amended to read:

19859.3. (a) Any permanent employee who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be granted bereavement leave with pay for the death of a person related by blood, adoption, or marriage, or any person residing in the immediate household of the employee at the time of death. The employee shall give advance notice to the employee's immediate supervisor and shall provide substantiation to support the request.

(b) For any one occurrence, the bereavement leave shall not exceed three days with pay. However, a request for two additional days of bereavement leave shall be granted, at the option of the employee, as either without pay or as a charge against any accrued sick leave credit.

(c) If additional bereavement leave is necessary, the employee may use accrued vacation, compensating time off, or take an authorized leave without pay, subject to the approval of the appointing power.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which adds Section 12945.7 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The confidentiality provisions set forth in Section 1 further the need to protect the privacy rights of employees regarding the passing of a family member, and to protect the enforcement process related to violations of the bereavement provisions. These limitations are needed in order to strike the proper balance between the privacy interests of the employee and the employee's family, and the public's right to access.