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AB-2011 Unlawful employment practices: small employer family leave mediation program: reproductive loss leave. (2023-2024)

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Assembly Bill No. 2011

CHAPTER 147

An act to amend Section 12945.21 of the Government Code, relating to employment.

[Approved by Governor July 18, 2024. Filed with Secretary of State July 18, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2011, Bauer-Kahan. Unlawful employment practices: small employer family leave mediation program: reproductive loss leave.

Existing law, the California Fair Employment and Housing Act, establishes the Civil Rights Department within the Business, Consumer Services, and Housing Agency and sets forth its powers and duties relating to enforcement of civil rights laws with respect to housing and employment. Existing law requires the department to create a small employer family leave mediation pilot program for the resolution of alleged violations of prescribed provisions on family care and medical and bereavement leave, applicable to employers with between 5 and 19 employees. Existing law requires the department to generally initiate the mediation within 60 days following a request, prohibits an employee from pursuing a civil action until the mediation is complete or the mediation is deemed unsuccessful, and tolls the statute of limitations applicable to the employee's claim, including for all related claims not subject to mediation, from the date of receipt of a request to participate in the program until the mediation is complete or the mediation is deemed unsuccessful. Under existing law, the mediation is deemed complete when one of specified events occurs, including that the mediator determines that the core facts of the employee's complaint are unrelated to the specified family care and medical and bereavement leave provisions. Existing law repeals the pilot program on January 1, 2025.

This bill would expand the program to include resolution of alleged violations of prescribed provisions on reproductive loss leave. In relation to the above-described provisions regarding the statute of limitations, the bill would additionally toll the statute of limitations applicable to an employee's claim relating to an alleged violation of specified provisions on reproductive loss leave, as provided. The bill would also deem the mediation to be complete if the mediator determines that the employer does not have between 5 and 19 employees, except as specified. The bill would delete the repeal date for the pilot program, thereby extending operation of the program indefinitely, and would make conforming changes.

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

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

SECTION 1. Section 12945.21 of the Government Code is amended to read:

12945.21. (a) The department shall create a small employer family leave mediation program for employers with between 5 and 19 employees. Under the program, when an employee requests an immediate right to sue alleging a violation of Section 12945.2, 12945.6, or 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 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, 12945.6, or 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, 12945.6, or 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, 12945.6, or 12945.7, and not under Section 12945.2, 12945.6, or 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) For purposes of this section, the following shall apply:

(1) 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, or 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.

(E) The mediator determines that the core facts of the employee's complaint are unrelated to Section 12945.2, 12945.6, or 12945.7.

(F) (i) The mediator determines that the employer has fewer than 5 or more than 19 employees.

(ii) Clause (i) shall not apply if the parties disagree about whether the employer has between 5 and 19 employees and the mediator is unable to determine that the employer has between 5 and 19 employees.

(2) 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, 12945.6, or 12945.7. Notwithstanding this subdivision, nothing in this section prohibits the parties from voluntarily choosing to mediate all alleged violations.