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SB-848 Employment: leave for reproductive loss. (2023-2024)

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Senate Bill No. 848

CHAPTER 724

An act to add Section 12945.6 to the Government Code, relating to employment.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 848, Rubio. Employment: leave for reproductive loss.

Existing law, the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to 5 days of bereavement leave upon the death of a family member.

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 reproductive loss leave following a reproductive loss event, as defined. The bill would require that leave be taken within 3 months of the event, except as described, and pursuant to any existing leave policy of the employer. The bill would provide that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. Under the bill, in the absence of an existing policy, the reproductive loss 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. The bill would make leave under these provisions a separate and distinct right from any right under the California Fair Employment and Housing Act.

The bill would make it an unlawful employment practice for an employer to retaliate against an individual, as described, because of the individual's exercise of the right to reproductive loss leave or the individual's giving of information or testimony as to reproductive loss leave, as described. The bill would require the employer to maintain employee confidentiality relating to reproductive loss leave, as specified.

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 12945.6 is added to the Government Code, to read:

12945.6. (a) For purposes of this section, the following definitions apply:

(1) (A) "Assisted reproduction" means a method of achieving a pregnancy through an artificial insemination or an embryo transfer and includes gamete and embryo donation.

(B) "Assisted reproduction" does not include any pregnancy achieved through sexual intercourse.

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

(3) "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.

(4) "Failed adoption" means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to a person who would have been a parent of the adoptee if the adoption had been completed.

(5) "Failed surrogacy" means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to a person who would have been a parent of a child born as a result of the surrogacy.

(6) "Miscarriage" means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.

(7) "Reproductive loss event" means the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

(8) "Reproductive loss leave" means the leave provided by subdivision (b).

(9) "Stillbirth" means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.

(10) "Unsuccessful assisted reproduction" means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a person, the person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

(b) (1) 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 reproductive loss leave following a reproductive loss event. If an employee experiences more than one reproductive loss event within a 12-month period, an employer shall not be obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period.

(2) The employer shall allow the days an employee takes for reproductive loss leave to be nonconsecutive.

(3) (A) Except as provided in subparagraph (B), reproductive loss leave shall be completed within three months of the event entitling the employee to that leave under paragraph (1).

(B) Notwithstanding subparagraph (A), if, prior to or immediately following a reproductive loss event, an employee is on or chooses to go on leave from work pursuant to Section 12945, 12945.2, or any other leave entitlement under state or federal law, the employee shall complete their reproductive loss leave within three months of the end date of the other leave.

(4) (A) Reproductive loss leave shall be taken pursuant to any existing applicable leave policy of the employer.

(B) If there is no existing applicable leave policy, reproductive loss 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.

(c) It shall be an unlawful employment practice for an employer to retaliate against an individual, including, but not limited to, refusing to hire, discharging, demoting, fining, suspending, expelling, or discriminating against, an individual because of either of the following:

(1) An individual's exercise of the right to reproductive loss leave.

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

(d) 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.

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

(f) An employee's right to reproductive loss leave shall be construed as a separate and distinct right from any right under this part.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 12945.6 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 a reproductive loss, and to protect the enforcement process related to violations of these 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.