
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 1383 (Jackson) - Employees: time off

Version: March 25, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: L., P.E. & R. 3 - 0

Mandate: No

Consultant: Robert Ingenito

Bill Summary: SB 1383 would amend existing provisions regarding protected child-related activities for which an employee can take time off from work to include time off to attend to an emergency school closure pursuant to a state of emergency declaration by federal, state, or local government agency. These protections would be available to employees working for employers of all sizes.

Fiscal Impact: The Department of Industrial Relations (DIR) indicates that, minimally, it would incur first year costs of \$198,000, and \$186,000 annually thereafter, to implement the provisions of the bill (special fund).

Background: Current law, the Family School Partnership Act, prohibits an employer who employs 25 or more employees working at the same location from discharging or in any way discriminating against an employee who is a parent of one or more children aged 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 (1) to find, enroll, or reenroll their child in a school or 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. Time off shall not exceed eight hours in any calendar month of the year, or (2) to address a childcare provider or school emergency, if the employee gives notice to the employer.

Current law requires the employee to 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, as specified. An employee also may utilize time off without pay for this purpose, to the extent made available by his or her employer.

Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment for taking this time off to engage in permitted child-related activities is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. An employer who willfully refuses to rehire, promote, or otherwise restore an employee determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing 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.

Proposed Law: This bill would do the following:

- Remove the employee size threshold (25 or more employees), thereby applying the Family School Partnership Act to all employers.
- Additionally authorize an employee to take time off work to attend to an emergency school closure pursuant to a state of emergency declaration by federal, state, or local government agency if the employee gives notice to the employer.
- Specify that time off taken for a childcare provider or school emergency (including a school closure) shall not be limited to 40 hours and may be extended to the duration of the emergency.

Related Legislation:

- SB 943 (Chang, 2020) would authorize the use of Paid Family Leave benefits, until June 1, 2021, for individuals who need to take time off work to care for a minor child whose school has been closed due to the COVID-19 virus outbreak or is caring for a special needs child or adult, or both, due to the outbreak. The bill will be heard today in the Committee.
- AB 3216 (Kalra, 2020) would make it an unlawful employment practice for any employer to refuse to grant a request by any employee to take family care and medical leave due to the coronavirus (COVID-19) with a guarantee of employment in the same or comparable position upon the termination of the leave. The bill is pending in the Assembly Appropriations Committee.

Staff Comments: As noted above, this bill would amend Labor Code section 230.8 to (1) expand the leave protections to address a childcare or school emergency to apply to all employers, (2) include a declaration of a state of emergency as a protected reason to take leave, and (3) allow for time in excess of 40 hours in that event. DIR notes that no clear precedent exists that it can use to estimate the fiscal impact of such a broad expansion of Section 230.8 protections. However, given that the bill's expansion would cover emergencies such that all employees could potentially be affected at the same time, the impact of the bill's expansion could be significant.

DIR anticipates that the bill's expansion to include all employers could generate more retaliation claims, since small employers (those with fewer than 25 employees) by their nature have smaller staffs, and thus less flexibility to cover employee absences. Additionally, the expansion of protected leave to continue beyond 40 hours for the duration of a federal, state, or local emergency could generate more claims because employers that might be willing to comply with the existing 40 hour requirement may be more likely to violate the law if they have to permit a worker to take extended time off.

DIR is already experiencing significant upward trend in the number of retaliation claims received due to the current public health crisis; specifically, the department reports a roughly 40 percent increase compared to the monthly average. Consequently, DIR would require new staff to address any additional workload resulting from this bill.

-- END --