

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kala, Chair

AB 95 (Low) – As Amended March 22, 2021

**SUBJECT:** Employees: bereavement leave

**SUMMARY:** Requires an employer with 25 or more employees to grant a request by an employee to take up to ten business days of unpaid bereavement leave for the death of a family member, as defined. An employer with fewer than 25 employees is required to grant an employee's request for up to three days of unpaid bereavement leave. Specifically, **this bill:**

- 1) Defines “employee” as any person who performs services for wages or salary under a contract of employment, express or implied, for an employer unless covered by a valid collective bargaining agreement with specified provisions.
- 2) Defines “employer” as a person employing an employee under any appointment or contract of hire, including the state, any political subdivision of the state, or any municipality.
- 3) Requires an employer with 25 or more employees to grant a request by an employee to take up to ten business days of unpaid bereavement leave for the death of a spouse, child, parent, parent-in-law, sibling, grandparent, grandchild or domestic partner.
- 4) Requires an employer with fewer than 25 employees to grant a request by an employee to take up to three business days of unpaid bereavement leave for the death of a spouse, child, parent, parent-in-law, sibling, grandparent, grandchild or domestic partner.
- 5) Provides that days of bereavement leave need not be consecutive and the leave must be taken within three months of the date of the death of the person prompting the need for the leave.
- 6) Authorizes employees to use vacation, personal leave, or compensatory time off in conjunction with the unpaid bereavement leave.
- 7) Provides that an employer may request documentation, as specified, of the death prompting the need for the leave and that the employee shall provide that documentation within 30 days of the first day of the leave.
- 8) Provides that an employee who is discharged, disciplined, or otherwise discriminated against in the terms or conditions of employment by their employer because the employee exercised their right to bereavement leave is entitled to reinstatement and to recover actual damages.
- 9) Provides that an employee who believes they have been discharged, disciplined, or discriminated against in violation of their right to bereavement leave may file a complaint with the Labor Commissioner (LC) or bring a civil action without exhausting any administrative remedies.
- 10) Provides that in any action brought to enforce these rights, a court may award to the prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees.

- 11) Requires an employer to maintain the confidentiality of a bereavement request including any documentation submitted by the employee.

**EXISTING LAW:**

Provides employees with the right to take time off from work without fear of discharge or discrimination for a number of reasons, including but not limited to, time off to appear in school on behalf of a child or to assist a family member who is the victim of a violent or serious felony.

**FISCAL EFFECT:** Unknown

**COMMENTS:** In the United States, access to bereavement leave in the event of the tragic loss of a family member is inconsistent and nonexistent for some workers. There is no federal law requiring that employers provide bereavement leave. This leaves it up to employers and employees to make informal arrangements that may not adequately address the employee's need to grieve. According to the Department of Labor, "the Fair Labor Standards Act, which sets standards for minimum wage, overtime pay, recordkeeping and youth employment, 'does not require payment for time not worked, including attending a funeral.'<sup>1</sup>" In the private sector, if bereavement leave is offered by an employer, it is typically "three to five days for full-time employees following the loss of an immediate family member, and one day following the loss of an extended family member or close friend."<sup>2</sup>

According to the author, AB 95 "will ensure workers are entitled to take job-protected, unpaid bereavement leave to mourn the loss of their immediate family member. No person should fear losing their job by taking time to grieve the death of their loved one. The pandemic has killed nearly 40,000 people in California, and the need for this legislation is urgent. But it will also have a long-lasting impact. We cannot expect people to work at full productivity while they are mourning the death of a loved one. AB 95 will protect Californians during moments of immense hardship."

**Arguments in Support**

The California Employment Lawyers Association (CELA), a sponsor of the bill, argues "CELA supports AB 95 because it fills a critical gap in our current family leave laws. While the federal Family Medical Leave Act and the California Family Rights Act provide employees with job-protected leave in order to care for an ailing family member, the protected leave immediately ends upon the death of the family member.

Without a statutory right to take bereavement leave, an employer may legally discharge an employee for taking any leave of absence to prepare or attend the funeral of a loved one. AB 95 corrects this injustice by affording employees the right to a limited bereavement leave and prohibiting employers from discharging or otherwise discriminating against employees for taking a leave."

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<sup>1</sup> Cited in "When it comes to bereavement leave, the U.S. is unspeakably cruel," Salon, September 30, 2019.

<sup>2</sup> Ibid.

## **Arguments in Opposition**

A coalition of employer organizations, including the California Chamber of Commerce, argues in opposition, “While one more paid benefit may not seem significant in isolation, this mandate must be viewed in the context of all of California’s other leaves and paid benefits. California has numerous protected, overlapping leaves and benefits requirements. Despite the economic struggles that businesses have faced in light of COVID-19, the number of overlapping leaves has grown over the last year and continues to grow:

- Paid sick leave – minimum of three days of leave for an employee or family member’s illness or preventative care. There is a bill proposal this year to increase the minimum number of paid sick days from 3 to 5 days
- CalOSHA Emergency Temporary Standard – imposed a new 10-day paid leave on all employers for all employees who have COVID-19 or may have been exposed, even if the exposed employee never contracts COVID-19; this leave has no pay cap. Also it mandates employer pay for mandatory COVID-19 testing for employers
- FFCRA and AB 1867 – imposed 80-hour paid leave requirement on all employers in 2020 for various COVID-19-related reasons
- Workers’ Compensation – expanded presumption for COVID-19 so that employee may be entitled to paid leave and benefits under workers’ compensation system
- SB 95 – The Legislature recently passed budget trailer bill language that imposes a second 80-hour paid leave requirement in 2021, retroactive to January 1, 2021, for various COVID-19-related reasons
- Organ and Bone Marrow Donor leave – 30 days paid leave plus 30 additional days of unpaid leave
- Voting leave – two hours of paid leave for all statewide elections.”

## **Prior Legislation**

AB 2992 (Weber) Chapter, Statutes of 2020 expanded leave protections for employees who are victims of a crime and to their immediate family members who are deceased as a direct result of a crime.

AB 2999 (Low) of 2020 was nearly identical to this bill. It died without a hearing in Senate Judiciary Committee.

AB 325 (Lowenthal) of 2011 would have provided employees with up to three days of unpaid bereavement leave. The bill was vetoed by Governor Jerry Brown.

AB 2340 (Monning) of 2010 would have provided employees in California with the right to take up to three days of unpaid bereavement leave. The bill was vetoed by Governor Schwarzenegger.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Alliance for Youth and Community Justice  
California Employment Lawyers Association  
California Immigrant Policy Center  
California Labor Federation  
California Teachers Association  
California Women's Law Center  
California Work & Family Coalition  
Californians for Safety and Justice  
Child Care Law Center  
Consumer Attorneys of California  
Equal Rights Advocates  
Friends Committee on Legislation of California  
Futures Without Violence  
Human Impact Partners  
Jewish Center for Justice  
LA Best Babies Network  
LAANE  
Legal Aid At Work  
National Association of Social Workers, California Chapter  
National Council of Jewish Women Los Angeles  
Orange County Employees Association  
Our Family Coalition  
Public Counsel  
Restaurant Opportunities Centers of California  
United Farm Workers  
Working Partnerships USA

**Support If Amended**

Valley Industry and Commerce Association (VICA)

**Oppose**

Associated General Contractors  
Brea Chamber of Commerce  
California Association for Health Services At Home  
California Bankers Association  
California Beer and Beverage Distributors  
California Building Industry Association  
California Chamber of Commerce  
California Farm Bureau Federation  
California Food Producers  
California Landscape Contractor's Association  
California Restaurant Association  
California Retailers Association

California Special Districts Association  
California State Council of The Society for Human Resource Management (CALSHRM)  
Carlsbad Chamber of Commerce  
Civil Justice Association of California  
Construction Employers' Association  
El Dorado Hills Chamber of Commerce  
Family Winemakers of California  
Folsom Chamber of Commerce  
Garden Grove Chamber of Commerce  
Greater Bakersfield Chamber of Commerce  
Greater Coachella Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Housing Contractors of California  
Long Beach Area Chamber of Commerce  
Murrieta Wildomar Chamber of Commerce  
National Federation of Independent Business  
North Orange County Chamber of Commerce  
North San Diego Business Chamber  
Oceanside Chamber of Commerce  
Official Police Garages of Los Angeles  
Orange County Business Council  
Oxnard Chamber of Commerce  
Pleasanton Chamber of Commerce  
Public Risk Innovation, Solutions, and Management  
Rancho Cordova Chamber of Commerce  
Redondo Beach Chamber of Commerce & Visitors Bureau  
San Gabriel Valley Economic Partnership  
Santa Maria Valley Chamber of Commerce  
Simi Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Southern California Legislative Council  
Southwest California Legislative Council  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
Union Roofing Contractors Association  
Western Car Wash Association  
Western Growers Association

**Analysis Prepared by:** Megan Lane / L. & E. /