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# Labor

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# Labor

## Labor; employee literacy education

Labor Code §§ 1040, 1041, 1042, 1043, 1044 (new).  
SB 647 (Dills); 1991 STAT. Ch. 339  
Support: California Labor Federation, AFL-CIO

Existing law requires private employers who regularly employ twenty-five or more employees to make reasonable accommodations for employees who wish to participate in a drug or alcohol rehabilitation program, as long as the accommodations do not impose an undue hardship on the employer.<sup>1</sup> Chapter 339 additionally requires these employers to reasonably accommodate and assist<sup>2</sup> any employee who reveals a literacy problem and who requests the employer's help in enrolling in a literacy education program, unless this accommodation would impose an undue hardship on the employer.<sup>3</sup> Chapter 339 states that an employee

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1. CAL. LAB. CODE § 1025 (West 1988). The employer is required to make reasonable efforts to keep private the fact that the employee has enrolled in a rehabilitation program. *Id.* § 1026 (West 1988). An employee may file a complaint with the Labor Commissioner if the individual feels a reasonable accommodation was not made. *Id.* § 1028 (West 1988). See generally *Wilkinson v. Times Mirror Corp.*, 215 Cal. App. 3d 1034, 1051, 264 Cal. Rptr. 194, 205 (1990) (noting that, in enacting California Labor Code section 1025, the Legislature recognized the interest of employers in maintaining a drug and alcohol free environment by stating that the requirement of allowing employees to enroll in alcohol or drug rehabilitation programs is not meant to prohibit employers from refusing to hire or discharge an employee whose current use of alcohol or drugs makes the person unable to perform assigned duties).

2. See CAL. LABOR CODE § 1041(b) (enacted by Chapter 339) (definition of employer assistance includes, but is not limited to, providing the employee with the locations of local literacy education programs or arranging for a literacy education provider to visit the job site).

3. *Id.* § 1041(a) (enacted by Chapter 339). Chapter 339 requires employers to take reasonable care to ensure that the employee's literacy problems remain private. *Id.* § 1042 (enacted by Chapter 339). Chapter 339 states that the employer is under no obligation to provide time off with pay for an employee who wishes to enroll and participate in a literacy education program. *Id.* § 1043 (enacted by Chapter 339). See *Workplace Literacy*, *Seattle Times*, Aug. 7, 1991, at B1 (stating that the Department of Labor plans to establish a system that will help small and medium-sized businesses develop literacy programs for individual workers' needs); *Work Force or Nonworking Poor?*, *N.Y. Times*, July 21, 1991, § 3, at 11, col. 2 (arguing that it is in business' best interest to encourage organizations that train and educate adult workers, and stating that unless workplace literacy programs proliferate at a greater rate, businesses will be fighting over a smaller and smaller group of skilled employees, "while countless marginally productive workers are shuffled off to permanent unemployment"); *Workers Will Be Paid As They Learn English*, *Seattle Times*, Jan. 31, 1991, at B3

*Labor*

who satisfactorily performs the assigned work, and reveals the existence of a literacy problem, must not be subject to termination of employment.<sup>4</sup>

*JWD*

*MK*

**Labor; family care leave**

Government Code §§ 12945.2, 19702.3 (new).

AB 77 (Moore); 1991 STAT. Ch. 462

Existing law makes it unlawful, unless based upon a bona fide occupational qualification,<sup>1</sup> for an employer to refuse to grant a female employee a leave of absence for a reasonable period of

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(describing a demonstration program, funded by a Department of Labor grant to the Seattle-King County Private Industry Council, designed to teach English to participating companies' employees who are recent immigrants to the U.S.); Employees See Writing on the Wall, But Many Are Unable to Read It, *Newsday, Inc.*, Nassau and Suffolk Edition, Oct. 28, 1990, Business section, at 63 (stating that the functional illiteracy rate of America is 20%, compared to 5% in Japan). Motorola will spend about \$35 million by 1992 to bring its workforce to a point where every employee has a sixth or seventh grade reading and math ability. *Id.* See also Senate Passes Literacy Bill with a 1 Billion Dollar Allotment, *Washington Times*, Feb. 7, 1990, § A, at A4 (stating that the recently-enacted National Literacy Act will improve the effectiveness and management of literacy efforts by eliminating duplication of federal agencies). *Cf.* COLO. REV. STAT. § 23-60-103 (West 1990) (defining a workplace literacy program as one which offers remedial education in basic mathematics or literacy skills and is sponsored by one or more private employers for the benefit of employees, and is conducted in the workplace); MISS. CODE ANN. § 57-73-25 (1990) (stating that employers who provide basic skills training or retraining, designed to increase opportunities for employee advancement with the employer, are granted a 25% income tax credit). See generally Teaching America to Read and Write, *Chicago Tribune*, Aug. 10, 1991, editorial section, at 16 (stating that an estimated 23 to 27 million Americans are functionally illiterate); *id.*, Dec. 31, 1989, Employment '90 section, at 15 (stating that a recent survey by Fortune Magazine and Allstate Insurance Co., found that 36% of the largest American corporations offer remedial courses in the "3 R's").

4. CAL. LAB. CODE § 1044 (enacted by Chapter 339).

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1. See *Johnson Controls, Inc., v. California Fair Employment and Housing Comm'n*, 218 Cal. App. 3d 517, 540, 267 Cal. Rptr. 158, 170 (1990) (discussing the requirements of a bona fide occupational qualification defense under section 12940 of the Government Code).

time<sup>2</sup> because of pregnancy, childbirth, or a related medical condition.<sup>3</sup> Chapter 462 enacts the Family Rights Act of 1991, which expands family care leave by making it unlawful for specified employers<sup>4</sup> to refuse to grant an eligible employee's<sup>5</sup> request for an unpaid family care leave<sup>6</sup> of up to four months in a twenty four month period.<sup>7</sup> If the employee's need for family care leave is foreseeable, the employee must provide the employer with reasonable advance notice of the need for the leave.<sup>8</sup> Chapter 462 permits employers to deny family care leave requests if the

2. See CAL. GOV'T CODE § 12945(b)(2) (West Supp. 1991) (defining a reasonable period of time as the period during which the female employee is disabled on account of the pregnancy, childbirth, or related medical condition). The period of leave may not exceed four months. *Id.*

3. *Id.* § 12945(b)(2) (West Supp. 1991).

4. See *id.* § 12945.2(a) (enacted by Chapter 462) (excluding employers with fewer than 50 employees).

5. See *id.* (providing that only employees with more than one year of continuous service and who are eligible for other benefits are eligible for family care leave, if they meet the requirements of Chapter 462).

6. See *id.* § 12945.2(b)(3) (enacted by Chapter 462) (allowing family care leave to be based upon the birth of an employee's child, the adoption of a child, or the serious illness of an employee's child). See *id.* § 12945.2(b)(1) (definition of child). Family care leave also includes leave to care for a parent or spouse who has a serious health condition. *Id.* See *id.* § 12945.2(b)(6) (definition of parent). Chapter 462 defines a serious health condition as an illness, injury, or other condition which warrants the participation of a family member during treatment involving inpatient care at a health care facility or continuing treatment or supervision by a health care provider. *Id.* § 12945.2(b)(7) (enacted by Chapter 462).

7. *Id.* § 12945.2(a) (enacted by Chapter 462). Cf. W. VA. CODE § 21-5D-4 (1990) (entitling employees to 12 weeks of unpaid family leave in a 12 month period for the birth of a child, adoption of a child, or serious health condition of a child, spouse, parent, or dependant). See generally Gimler, *Mandated Parental Leave and the Small Business*, 93 DICK. L. REV. 599 (1989) (discussing attempts to enact federal family leave legislation).

8. CAL. GOV'T CODE § 12945.2(g) (enacted by Chapter 462). If the employee's need for leave is foreseeable due to planned medical treatment, the employee must make a reasonable effort to schedule the treatment to avoid disrupting the employer's operations, subject to the approval of the health care provider of the individual requiring treatment. *Id.* § 12945.2(h) (enacted by Chapter 462). The employer may require that an employee's request for family care leave include certification by the health care provider of the individual requiring care. *Id.* § 12945.2(i) (enacted by Chapter 462). Sufficient certification requires: (1) The date on which the serious health condition commenced; (2) the probable duration of the condition; (3) an estimate of the amount of time the health care provider believes the employee needs to care for the individual requiring care; and (4) a statement that the serious health condition warrants the participation of a family member in the care or supervision of the individual requiring care. *Id.*

leave would cause undue hardship<sup>9</sup> to the employer's operations, if the employee's salary meets certain qualifications,<sup>10</sup> or if the other parent of the employee's child is also taking family care leave or is unemployed.<sup>11</sup>

Chapter 462 prohibits employers from discriminating against individuals for exercising their right to family care leave or testifying in any proceeding about either their own family care leave or that of another individual.<sup>12</sup> Chapter 462 specifically requires the employer to guarantee employment in the same or a comparable position<sup>13</sup> upon the employee's return from family care leave.<sup>14</sup>

Existing law prohibits appointing authorities<sup>15</sup> from engaging in certain types of discrimination against civil servants.<sup>16</sup> Chapter 462 additionally prohibits an appointing authority from

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9. CAL. GOV'T CODE § 12945.2(p) (enacted by Chapter 462). Chapter 462 directs the Fair Employment and Housing Commission to consider and specify what would constitute undue hardship for denying family care leave. 1991 Cal. Stat. ch. 462, sec. 6, at \_\_\_. The commission must also specify the advance notice required for a leave request and the appropriate minimum duration of family care leave. *Id.*

10. CAL. GOV'T CODE § 12945.2(q) (enacted by Chapter 462). The employer can refuse to grant leave to salaried employees who are either among the five highest paid individuals or, in terms of gross salary, within the top ten percent or persons paid by the employer at the same location. *Id.*

11. *Id.* § 12945.2(o) (enacted by Chapter 462). Chapter 462 further provides that the employer need not grant leave if it would allow the employee and the other parent of the child a total of more than four months of family care leave in a twenty four month period. *Id.*

12. *Id.* § 12945.2(j) (enacted by Chapter 462). Other prohibited activities include refusing to hire, discharging, fining, suspending and expelling. *Id.*

13. *See id.* § 12945.2(b)(4) (enacted by Chapter 462) (defining employment in the same or a comparable position to require the same or similar duties, pay, and geographic location as the previous position).

14. *Id.* § 12945.2(a) (enacted by Chapter 462). Chapter 462 also provides that family care leave does not interrupt the length of an employee's service for purposes of longevity, seniority under a collective bargaining agreement or any employee benefit plan. *Id.* § 12945.2(f) (enacted by Chapter 462). An employee may elect, or the employer may require the employee, to use any accrued time off during this period, except that the employer's consent is required for an employee to use sick leave. *Id.* § 12945.2(d) (enacted by Chapter 462). Employees may continue to participate in health care plans, although the employer may require the employee to pay the premium during the period not covered by accrued time off. *Id.* § 12945.2(e) (enacted by Chapter 462). Employees may also continue to participate in pension and retirement plans, but the employer need not make plan payments during the period of family care leave. *Id.*

15. *See id.* § 18525 (West 1980) (definition of an appointing authority).

16. *Id.* § 19702 (West Supp. 1991).

discriminating against someone for exercising family care leave rights under Chapter 462.<sup>17</sup>

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17. *Id.* § 19702.3 (enacted by Chapter 462). Nor may an appointing authority discriminate against an individual for testifying in any proceeding about either their own family leave or that of another. *Id.*

