

Senate Bill No. 63

CHAPTER 686

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

[Approved by Governor October 12, 2017. Filed with
Secretary of State October 12, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 63, Jackson. Unlawful employment practice: parental leave.

Existing law, the Moore-Brown-Roberti Family Rights Act, or California Family Rights Act (CFRA), makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period (1) for reason of a child born to, adopted by, or placed for foster care with, the employee, (2) to care for the employee's parent or spouse who has a serious health condition, as defined, or (3) because the employee is suffering from a serious health condition rendering him or her unable to perform the functions of the job.

Existing law prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work. Existing law also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes that leave, as specified.

This bill would prohibit an employer, as defined, from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. The bill would also prohibit an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave. The bill would allow the employer to recover coverage costs under specific circumstances. The bill would provide that it would not apply to an employee who is subject to both specified state law regarding family care and medical leave, and the federal Family and Medical Leave Act of 1993. Under the bill, if the employer employs both parents and they are entitled to leave pursuant to this bill for the same birth, adoption, or foster care placement, the parents' mandated parental leave would be capped at the amount granted to an employee by the bill. The bill would authorize the employer to grant simultaneous leave to these parents.

This bill would also prohibit an employer from refusing to hire, or from discharging, fining, suspending, expelling, or discriminating against, an individual for exercising the right to parental leave provided by this bill or giving information or testimony as to his or her own parental leave, or another person's parental leave, in an inquiry or proceeding related to rights guaranteed under this bill.

The bill would additionally prohibit an employer from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right provided under this bill.

The bill would require the Fair Employment and Housing Council, to the extent that state regulations interpreting CFRA are within the scope of, and not inconsistent with the bill or with other state law, to incorporate those regulations by reference to govern leave under the bill.

Under existing law, the Department of Fair Employment and Housing is authorized to provide mediation services to parties involved in actions under its jurisdiction.

This bill, until January 1, 2020, would require the Department of Fair Employment and Housing, upon receiving funding from the Legislature, to create a parental leave mediation pilot program, as specified. Under the pilot program, within 60 days of receipt of a right-to-sue notice, an employer may request all parties to participate in the department's Mediation Division Program. If the employer makes such a request, the bill would prohibit an employee from pursuing any civil action under these provisions until the mediation is complete, as defined, which would include an employee's election not to participate in mediation. The bill would provide that the employee's statute of limitations would be tolled during the course of the mediation, as specified.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be referred to, as the New Parent Leave Act.

SEC. 2. Section 12945.6 is added to the Government Code, to read:

12945.6. (a) It shall be an unlawful employment practice for an employer to do any of the following:

(1) Refuse to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, upon request, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. If, on or before the commencement of this parental leave, the employer does not provide a guarantee of employment in the same or a comparable position upon the termination of the leave, the employer shall be deemed to have refused to allow the leave. The employee shall be entitled to utilize accrued vacation pay, paid sick time, other accrued paid time off, or other paid or

unpaid time off negotiated with the employer, during the period of parental leave.

(2) Refuse to maintain and pay for coverage for an eligible employee who takes parental leave pursuant to this section under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date that the parental leave commences, at the level and under the conditions that coverage would have been provided if the employee had continued to work in his or her position for the duration of the leave.

(b) An employee is entitled to take, in addition to the leave provided pursuant to this section, leave provided pursuant to Section 12945 if the employee is otherwise qualified for that leave.

(c) This section shall not apply to an employee who is subject to both Section 12945.2 and the federal Family and Medical Leave Act of 1993.

(d) An employer may recover the premium that the employer paid as required by this section for maintaining coverage for the employee under the group health plan, if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(2) The failure of the employee to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

(e) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents parental leave totaling more than the amount specified in subdivision (a). The employer may, but is not required to, grant simultaneous leave to both of these employees.

(f) Parental leave taken pursuant to this section shall run concurrently to parental leave taken as described in Sections 44977.5, 45196.1, 87780.1, and 88196.1 of the Education Code.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to parental leave provided by subdivision (a).

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

(h) 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.

(i) For purposes of this section, "employer" means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.

(2) The state, and any political or civil subdivision of the state and cities.

(j) To the extent that state regulations interpreting the Moore-Brown-Roberti Family Rights Act, also known as the California Family Rights Act (Sections 12945.2 and 19702.3), are within the scope of, and not inconsistent with this section or with other state law, including the California Constitution, the council shall incorporate those regulations by reference to govern leave under this section.

(k) The department, upon receiving the necessary funding, upon appropriation by the Legislature, shall create a parental leave mediation pilot program. Under the pilot program, an employer may, within 60 days of receipt of a right-to-sue notice, request all parties to participate in the department's Mediation Division Program. If an employer requests mediation within 60 days of receipt of a right-to-sue notice, an employee shall not pursue any civil action under this section until the mediation is complete. The employee's statute of limitations, including for all related claims not under this section, shall be tolled upon receipt of the employer's request to participate in the department's Mediation Division Program until the mediation is complete. For purposes of this subdivision, a mediation is complete when, at any time after the employer's request, either party notifies the department's Mediation Division Program and all other parties that it is electing not to participate in, or is withdrawing from, the mediation or the department notifies the parties that it believes further mediation would be fruitless.

(l) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

SEC. 3. Section 12945.6 is added to the Government Code, to read:

12945.6. (a) It shall be an unlawful employment practice for an employer to do any of the following:

(1) Refuse to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, upon request, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. If, on or before the commencement of this parental leave, the employer does not provide a guarantee of employment in the same or a comparable position upon the termination of the leave, the employer shall be deemed to have refused to allow the leave. The employee shall be entitled to utilize accrued vacation pay, paid sick time, other accrued paid time off, or other paid or unpaid time off negotiated with the employer, during the period of parental leave.

(2) Refuse to maintain and pay for coverage for an eligible employee who takes parental leave pursuant to this section under a group health plan, as defined in Section 5000(b)(1) of the Internal Revenue Code of 1986, for the duration of the leave, not to exceed 12 weeks over the course of a 12-month period, commencing on the date that the parental leave commences, at the level and under the conditions that coverage would have

been provided if the employee had continued to work in his or her position for the duration of the leave.

(b) An employee is entitled to take, in addition to the leave provided pursuant to this section, leave provided pursuant to Section 12945 if the employee is otherwise qualified for that leave.

(c) This section shall not apply to an employee who is subject to both Section 12945.2 and the federal Family and Medical Leave Act of 1993.

(d) An employer may recover the premium that the employer paid as required by this section for maintaining coverage for the employee under the group health plan, if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired.

(2) The failure of the employee to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the control of the employee.

(e) In any case in which both parents entitled to leave under subdivision (a) are employed by the same employer, the employer is not required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents parental leave totaling more than the amount specified in subdivision (a). The employer may, but is not required to, grant simultaneous leave to both of these employees.

(f) Parental leave taken pursuant to this section shall run concurrently to parental leave taken as described in Sections 44977.5, 45196.1, 87780.1, and 88196.1 of the Education Code.

(g) It shall be an unlawful employment practice for an employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, an individual because of either of the following:

(1) An individual's exercise of the right to parental leave provided by subdivision (a).

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

(h) 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.

(i) For purposes of this section, "employer" means either of the following:

(1) A person who directly employs 20 or more persons to perform services for a wage or salary.

(2) The state, and any political or civil subdivision of the state and cities.

(j) To the extent that state regulations interpreting the Moore-Brown-Roberti Family Rights Act, also known as the California Family Rights Act (Sections 12945.2 and 19702.3), are within the scope of, and not inconsistent with this section or with other state law, including the California Constitution, the council shall incorporate those regulations by reference to govern leave under this section.

(k) This section shall take effect January 1, 2020.

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