

CONCURRENCE IN SENATE AMENDMENTS

AB 1949 (Low)

As Amended August 16, 2022

Majority vote

SUMMARY

Requires private employers with five or more employees and public sector employers to provide employees with at least 30 days of service up to five unpaid days of bereavement leave upon the death of a family member.

Senate Amendments

- 1) Make the provision of unpaid bereavement leave *permissive* rather than required if the employer has no existing bereavement leave policy.
- 2) Provide that if an employer has an existing leave policy providing for less than five days of paid bereavement leave, the employee shall be entitled to no less than a total of five days of bereavement leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be, but are not required to be, unpaid.

COMMENTS

In the United States, workers' access to bereavement leave in the event of the tragic loss of a family member is inconsistent or nonexistent. The state of Oregon offers up to 2 weeks of bereavement leave for employees working for employers of a certain size under its unpaid but job-protected family leave law. 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, (<https://www.dol.gov/general/topic/benefits-leave/funeral-leave>) which sets standards for minimum wage, overtime pay, recordkeeping and youth employment, 'does not require payment for time not worked, including attending a funeral.'¹" 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."

According to the Author

"This legislation 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 85,000 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 1949 will protect Californians during moments of immense hardship."

Arguments in Support

The California Employment Lawyers Association, Legal Aid at Work, Equal Rights

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

Advocates, and Californians for Safety and Justice, co-sponsors of the bill, argue in support that bereavement leave is a necessary extension of funeral leave passed decades ago. They state, "in 1968, when the Vietnam War death toll was at its peak, the U.S. government passed funeral leave for federal employees to take time off for the combat-related deaths of family or 'any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.' We must act with the same kind of compassion to protect the Californians who have lost a family member during this pandemic or for other reasons. Because no one worker should ever have to choose between their employment and grieving the loss of a loved one."

Arguments in Opposition

The California Landscape Contractors Association is opposed and states, "If a private company does not have a bereavement policy in place when an employee needs time for bereavement, it is negotiated with their employee on a case-by-case basis. AB 1949 creates new mandated leave burdens for employers that will hit small business especially hard. Most employers either have bereavement policies in place or work it out with their employees when the need arises."

FISCAL COMMENTS

According to the Senate Appropriations Committee, the Department of Fair Employment and Housing (DFEH) estimates that it would incur first-year General Fund costs of \$470,000, and \$464,000 annually thereafter, to investigate and enforce new complaints alleging a violation of bereavement leave rights. The Department assumes that 100 complaints would be filed per year, a figure derived from 1) the number of family and medical leave complaints DFEH receives, and 2) the fact that a large majority of employers already provide bereavement leave at some level.

The bill would additionally result in increased staffing costs for state departments by increasing the minimum days available for excluded employees to take bereavement leave. The magnitude of the increased costs is unknown, but potentially significant. Currently, an excluded employee is entitled to three days of paid bereavement leave and, if the death occurs out of state, two additional days of leave using unpaid time or accrued sick leave. This bill would effectively guarantee all bereaved state employees a minimum of five days.

VOTES:

ASM LABOR AND EMPLOYMENT: 6-1-0

YES: Kalra, Jones-Sawyer, Reyes, Chen, Ward, Carrillo

NO: Bigelow

ASM JUDICIARY: 9-0-1

YES: Stone, Cunningham, Davies, Holden, Kalra, Maienschein, Reyes, Friedman, Wicks

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 13-3-0

YES: Holden, Bryan, Calderon, Carrillo, Davies, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

NO: Bigelow, Megan Dahle, Fong

ASSEMBLY FLOOR: 59-9-10

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Cooley, Cooper, Cunningham, Davies, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO: Bigelow, Megan Dahle, Fong, Gallagher, Kiley, Nguyen, Seyarto, Smith, Voepel

ABS, ABST OR NV: Berman, Choi, Daly, Flora, Grayson, Lackey, Mayes, O'Donnell, Patterson, Valladares

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