

AMENDED IN SENATE MARCH 21, 2023

SENATE BILL

No. 848

Introduced by Senator Rubio

(Principal coauthor: Assembly Member Quirk-Silva)

**(Coauthors: Senators Blakespear, Laird, McGuire, Skinner, Stern,
and Wiener)**

(Coauthors: Assembly Members McKinnor, Pellerin, Luz Rivas, and
Schiavo)

February 17, 2023

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

LEGISLATIVE COUNSEL'S DIGEST

SB 848, as amended, Rubio. Employment: leave for loss-causing ~~grief~~ *related to reproduction or adoption.*

Existing law, the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to 5 days of bereavement leave upon the death of a family member.

This bill would additionally make it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to 5 days of reproductive loss leave upon a specified event, including a miscarriage, unsuccessful assisted reproduction, or failed adoption. The bill would require that leave be taken within 3 months of the event and pursuant to any existing leave policy of the employer. Under the bill, in the absence of an existing policy, the reproductive loss leave may be unpaid. However, the bill would authorize an employee to use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave. The bill

would make leave under these provisions a separate and distinct right from any right under the California Fair Employment and Housing Act.

The bill would make it an unlawful employment practice for an employer to engage in specified acts of discrimination, interference, or retaliation relating to an individual’s exercise of rights under the bill. The bill would require the employer to maintain employee confidentiality relating to reproductive loss leave, as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

~~This bill would state the intent of the Legislature to enact legislation that would provide employees with leave time after suffering a loss that causes grief.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

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

1 SECTION 1. Section 12945.6 is added to the Government Code,
2 to read:

3 12945.6. (a) For purposes of this section, the following
4 definitions apply:

5 (1) (A) “Assisted reproduction” means a method of achieving
6 a pregnancy through an artificial insemination or an embryo
7 transfer and includes gamete and embryo donation.

8 (B) “Assisted reproduction” does not include any pregnancy
9 achieved through sexual intercourse.

10 (2) “Diagnosis negatively impacting fertility” means a diagnosis
11 that negatively impacts the likelihood of biological conception of
12 a child for an individual, the individual’s current spouse or
13 domestic partner, or any other individual who would have been a
14 parent of a child born of the individual who received the diagnosis.

15 (3) “Diagnosis negatively impacting pregnancy” means a
16 diagnosis that negatively impacts the pregnancy of an individual,
17 an individual’s current spouse or domestic partner, or any person
18 who would have been a parent of a child born as a result of the
19 pregnancy.

- 1 (4) “Employee” means a person employed by the employer for
2 at least 30 days prior to the commencement of the leave.
- 3 (5) “Employer” means either of the following:
- 4 (A) A person who employs five or more persons to perform
5 services for a wage or salary.
- 6 (B) The state and any political or civil subdivision of the state,
7 including, but not limited to, cities and counties.
- 8 (6) “Failed adoption” means a failed adoption match or an
9 adoption that is not finalized because it is contested by another
10 party. This event applies to a person who would have been a parent
11 of the adoptee if the adoption had been completed.
- 12 (7) “Failed surrogacy” means the unsuccessful completion of
13 a surrogacy or establishment of a surrogacy agreement. This event
14 applies to a person who would have been a parent of a child born
15 as a result of the surrogacy.
- 16 (8) “Miscarriage” means a miscarriage by a person, by the
17 person’s current spouse or domestic partner, or by another
18 individual if the person would have been a parent of a child born
19 as a result of the pregnancy.
- 20 (9) “Reproductive loss leave” means the leave provided by
21 subdivision (b).
- 22 (10) “Stillbirth” means a stillbirth resulting from a person’s
23 pregnancy, the pregnancy of a person’s current spouse or domestic
24 partner, or another individual, if the person would have been a
25 parent of a child born as a result of the pregnancy that ended in
26 stillbirth.
- 27 (11) “Unsuccessful assisted reproduction” means an
28 unsuccessful round of intrauterine insemination or of an assisted
29 reproductive technology procedure. This event applies to the
30 individual, the individual’s current spouse or domestic partner,
31 or another individual, if that individual would have been a parent
32 of a child born as a result of the pregnancy.
- 33 (b) (1) It shall be an unlawful employment practice for an
34 employer to refuse to grant a request by any employee to take up
35 to five days of reproductive loss leave following a miscarriage,
36 unsuccessful assisted reproduction, failed adoption, failed
37 surrogacy, diagnosis negatively impacting pregnancy, diagnosis
38 negatively impacting fertility, or stillbirth.
- 39 (2) The employer shall allow the days an employee takes for
40 reproductive loss leave to be nonconsecutive.

1 (3) Reproductive loss leave shall be completed within three
2 months of the event entitling the employee to that leave under
3 paragraph (1).

4 (4) (A) Reproductive loss leave shall be taken pursuant to any
5 existing applicable leave policy of the employer.

6 (B) If there is no existing applicable leave policy, reproductive
7 loss leave may be unpaid, except that an employee may use
8 vacation, personal leave, accrued and available sick leave, or
9 compensatory time off that is otherwise available to the employee.

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

14 (1) An individual's exercise of the right to reproductive loss
15 leave.

16 (2) An individual's giving information or testimony as to their
17 own reproductive loss leave, or another person's reproductive
18 loss leave, in an inquiry or proceeding related to rights guaranteed
19 under this section.

20 (d) It shall be an unlawful employment practice for an employer
21 to interfere with, restrain, or deny the exercise of, or the attempt
22 to exercise, any right provided under this section.

23 (e) The employer shall maintain the confidentiality of any
24 employee requesting leave under this section. Any information
25 provided to the employer pursuant to this section shall be
26 maintained as confidential and shall not be disclosed except to
27 internal personnel or counsel, as necessary, or as required by law.

28 (f) An employee's right to reproductive loss leave shall be
29 construed as a separate and distinct right from any right under
30 this part.

31 SEC. 2. The Legislature finds and declares that Section 1 of
32 this act, which adds Section 12945.6 to the Government Code,
33 imposes a limitation on the public's right of access to the meetings
34 of public bodies or the writings of public officials and agencies
35 within the meaning of Section 3 of Article I of the California
36 Constitution. Pursuant to that constitutional provision, the
37 Legislature makes the following findings to demonstrate the interest
38 protected by this limitation and the need for protecting that
39 interest:

1 *The confidentiality provisions set forth in Section 1 further the*
2 *need to protect the privacy rights of employees regarding a*
3 *reproductive loss, and to protect the enforcement process related*
4 *to violations of these provisions. These limitations are needed in*
5 *order to strike the proper balance between the privacy interests*
6 *of the employee and the employee's family, and the public's right*
7 *to access.*

8 ~~SECTION 1. It is the intent of the Legislature to enact~~
9 ~~legislation that would provide employees with leave time after~~
10 ~~suffering a loss that causes grief.~~