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Source

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Chapter No.

96

AN ACT

Relating to employment rights based on pregnancy, childbirth, and related conditions, sick leave, and family leave.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Permitted to become law without signature

Actual Effective Date: September 16, 1992

AN ACT

1 Relating to employment rights based on pregnancy, childbirth, and related conditions, sick leave, and
2 family leave.

3

4 * Section 1. SHORT TITLE. This Act may be known as the Alaska Family Leave Act.

5 * Sec. 2. FINDINGS AND PURPOSE. (a) The legislature finds that

6 (1) loving parents are the best providers of care for their children;

7 (2) the number of single-parent households and two-parent households in which the single
8 parent or both parents work outside the home is increasing significantly;

9 (3) it is important to the development of a child and to the family unit that parents be
10 able to participate in early childrearing and the care of a child who has a serious health condition;

11 (4) the lack of employment opportunities to accommodate working parents can force
12 individuals to choose between job security and parenting; and

13 (5) it is important for the family unit that a person be able to care for a parent or spouse
14 who has a serious health condition.

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(b) The legislature declares that the purposes of this Act are

(1) to balance the demands of the public workplace with the needs of families, and to promote stability and economic security in families;

(2) to entitle public employees to take reasonable leave for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition, and in case of their own serious health condition; and

(3) to accommodate the legitimate interests of public employers.

* Sec. 3. AS 14.20.140 is amended by adding a new subsection to read:

(c) Notwithstanding a teacher's right to continued employment under AS 23.10.500 - 23.10.550, a school district may notify a teacher of nonretention under this section for the following school year for a permissible reason.

* Sec. 4. AS 14.20.145 is amended to read:

Sec. 14.20.145. AUTOMATIC REEMPLOYMENT. If notification of nonretention is not given according to AS 14.20.140, a teacher is entitled to be re-employed in the same district for the following school year on the contract terms the teacher and the employer may agree upon, or if no terms are agreed upon, the provisions of the previous contract are continued for the following school year, subject to AS 14.20.158. The right to be reemployed according to this section expires if the teacher does not accept reemployment within 30 days after the date on which the teacher receives a contract of reemployment. A teacher who is on family leave under AS 23.10.500 - 23.10.550 must comply with the 30-day deadline in this section to retain the teacher's reemployment rights under this section.

* Sec. 5. AS 14.20.590 is amended by adding a new subsection to read:

(b) Notwithstanding any provision of AS 14.20.550 - 14.20.610 to the contrary, unless the commissioner of education has waived compliance with AS 23.10.500 - 23.10.550 under AS 23.10.530(c), a negotiations agreement between an employer subject to AS 23.10.500 - 23.10.550 and an employee bargaining organization that does not contain benefit provisions at least as beneficial to the employee as those provided by AS 23.10.500 - 23.10.550 shall be considered to contain the benefit provisions of those statutes.

* Sec. 6. AS 23.10 is amended by adding new sections to read:

ARTICLE 8. PREGNANCY, CHILDBIRTH, AND FAMILY LEAVE.

Sec. 23.10.500. EMPLOYMENT BENEFITS AND PRIVILEGES FOR HEALTH AND

1 FAMILY CARE. (a) An employer shall grant an employee whose health is affected by
2 pregnancy, childbirth, or a related medical condition the same employment benefits and privileges
3 that the employer grants to other employees with similar ability to work who are not so affected,
4 including allowing the employee to take disability or sick leave or other accrued leave that the
5 employer makes available to temporarily disabled employees.

6 (b) An employee is eligible to take family leave if the employee has been employed by
7 the employer for at least 35 hours a week for at least six consecutive months or for at least
8 17 1/2 hours a week for at least 12 consecutive months immediately preceding the leave. The
9 leave may be unpaid leave. However, the employee may choose to substitute, or the employer
10 may require the employee to substitute, accrued paid leave to which the employee is entitled.
11 An employer shall permit an eligible employee to take family leave because of a serious health
12 condition for a total of 18 workweeks during any 24-month period. An employer shall permit
13 an eligible employee to take family leave because of pregnancy and childbirth or adoption for
14 a total of 18 workweeks within a 12-month period; the right to take leave for this reason expires
15 on the date one year after the birth or placement of the child. If the employee is entitled to a
16 longer period of time under (a) of this section, then the longer period applies. An eligible
17 employee is entitled to take family leave

18 (1) because of pregnancy and the birth of a child of the employee or the
19 placement of a child, other than the employee's stepchild, with the employee for adoption; an
20 employer may require that an employee using family leave under this paragraph take the leave
21 in a single block of time;

22 (2) in order to care for the employee's child, spouse, or parent who has a serious
23 health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster
24 child, stepchild, or legal ward; and

25 (3) because of the employee's own serious health condition.

26 (c) Notwithstanding (b) of this section, if a parent or child of two employees employed
27 by the same employer has a serious health condition, the employer is not required to grant family
28 leave to both employees simultaneously.

29 (d) During the time that an employee is on leave under this section, the employer shall
30 maintain coverage under any group health plan at the level and under the conditions that
31 coverage would have been provided if the employee had been employed continuously from the

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1 date the leave began to the date the employee returns from leave under (e) of this section.
2 However, the employer may require that the employee pay all or part of the costs for maintaining
3 health insurance coverage during a period of unpaid leave.

4 (e) Unless the employer's business circumstances have changed to make it impossible
5 or unreasonable, when an employee returns from leave under this section, the employer shall
6 restore the employee

7 (1) to the position of employment held by the employee when the leave began;

8 or

9 (2) to a substantially similar position with substantially similar benefits, pay, and
10 other terms and conditions of employment.

11 (f) This section does not apply to an employer's small employment facility if the total
12 number of employees employed within 50 road miles of the small employment facility, including
13 those employed at the facility, was fewer than 21 during the 20 consecutive workweeks in which
14 the employer employed at least 21 employees at all business facilities.

15 Sec. 23.10.510. EMPLOYEE NOTICE. If the necessity for leave under AS 23.10.500
16 is foreseeable based on an expected birth or adoption or on planned medical treatment or
17 supervision, the employee shall provide the employer with prior notice of the expected need for
18 leave in a manner that is reasonable and practicable. If the necessity for leave under that section
19 is foreseeable based on planned medical treatment or supervision, the employee shall also make
20 a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the
21 operations of the employer, subject to the approval of the health care provider of the employee
22 or the employee's child, spouse, or parent.

23 Sec. 23.10.520. EMPLOYEE TRANSFER. (a) A pregnant employee may request a
24 transfer to a suitable position under this section. An employer may not fill the position with a
25 person other than the requesting employee until the employer has offered the position to the
26 employee and the employee has refused the offer. A position is suitable if

27 (1) it is an existing unfilled position in the same administrative division in which
28 the employee is currently employed and is less strenuous or less hazardous than the employee's
29 current position;

30 (2) transfer to the position is recommended by a licensed health care provider;

31 (3) the employee is qualified and immediately able to perform the duties of the

1 position; and

2 (4) the transfer will not subject the employer to legal liability under a collective
3 bargaining contract or employment contract.

4 (b) An employer shall compensate an employee who receives a transfer under this section
5 at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply
6 generally to the work force, at which

7 (1) the employee was compensated immediately before requesting the transfer;
8 or

9 (2) the position into which the employee transfers is compensated.

10 Sec. 23.10.530. APPLICATION TO OTHER LAWS. (a) The provisions of
11 AS 23.10.500 - 23.10.550 do not affect any other provision of law relating to sex discrimination,
12 pregnancy, or parenthood.

13 (b) The provisions of AS 23.10.500 - 23.10.550 are subject to collective bargaining.
14 However, except as provided in (c) of this section, a collective bargaining contract that does not
15 contain benefit provisions at least as beneficial to the employee as those provided by
16 AS 23.10.500 - 23.10.550 shall be considered to contain the benefit provisions of those statutes.

17 (c) The commissioner of education may approve a collective bargaining agreement
18 entered into between a school district or a regional educational attendance area and a bargaining
19 organization representing certificated employees that does not meet the leave requirements of
20 AS 23.10.500 - 23.10.550, if the district or attendance area establishes to the satisfaction of the
21 commissioner that a variance from the requirements of AS 23.10.500 - 23.10.550 is necessary
22 to avoid a hardship on the school district based on the lack of qualified, available substitute
23 teachers to replace teachers on leave under AS 23.10.500 - 23.10.550 or the lack of available
24 housing for replacement teachers who do not live in the community.

25 Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS. (a) A
26 person aggrieved by a denial of a right or privilege granted by AS 23.10.500 - 23.10.540 may
27 file a complaint with the department.

28 (b) The department shall informally, promptly, and impartially investigate the matters set
29 out in a filed complaint. If the investigator determines that the allegations are supported by
30 substantial evidence, the investigator shall immediately try to eliminate the denial of rights or
31 privileges by conference, conciliation, and persuasion.

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1 Sec. 23.10.550. DEFINITIONS. In AS 23.10.500 - 23.10.550,

2 (1) "child" means an individual who is

3 (A) under 18 years of age; or

4 (B) 18 years of age or older and incapable of self-care because of mental
5 or physical disability;

6 (2) "employer" means the state and a political subdivision of the state that
7 employed at least 21 employees in the state for each working day during any period of 20
8 consecutive workweeks in the preceding two calendar years; "employer" does not include a
9 regional Native housing authority created under AS 18.55.995 - 18.55.998;

10 (3) "health care provider" means a dentist licensed under AS 08.36, a physician
11 licensed under AS 08.64, or a psychologist licensed under AS 08.86;

12 (4) "parent" means a biological or adoptive parent, a parent-in-law, or a
13 stepparent;

14 (5) "serious health condition" means an illness, injury, impairment, or physical
15 or mental condition that involves

16 (A) inpatient care in a hospital, hospice, or residential health care facility;

17 or

18 (B) continuing treatment or continuing supervision by a health care
19 provider;

20 (6) "small employment facility" means a facility of an employer that did not
21 employ 21 or more employees during any period of 20 consecutive workweeks in the preceding
22 two calendar years;

23 (7) "state" includes the University of Alaska, the Alaska Railroad, and the
24 executive, legislative, and judicial branches of state government including public and quasi-public
25 corporations and authorities established by law.

26 * Sec. 7. AS 23.40.200 is amended by adding a new subsection to read:

27 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to the contrary, an
28 agreement between the employer subject to AS 23.10.500 - 23.10.550 and an employee
29 bargaining organization that does not contain benefit provisions at least as beneficial to the
30 employee as those provided by AS 23.10.500 - 23.10.550 shall be considered to contain the
31 benefit provisions of those statutes.

1 * Sec. 8. AS 39.20.225(b)(4) is amended to read:

2 (4) Pregnancy and childbirth or the placement of a child, other than the
3 employee's stepchild, with the employee for adoption is a medical reason for an [A FEMALE]
4 officer or employee to take personal leave. [A FEMALE OFFICER OR EMPLOYEE,
5 OTHERWISE QUALIFIED FOR A LEAVE OF ABSENCE, IS ENTITLED TO TAKE A
6 MAXIMUM OF NINE WEEKS LEAVE IMMEDIATELY PRECEDING AND FOLLOWING
7 CHILDBIRTH. IF THE OFFICER'S OR EMPLOYEE'S ACCRUED PERSONAL LEAVE IS
8 INSUFFICIENT FOR THIS PURPOSE, THE OFFICER OR EMPLOYEE IS ENTITLED TO
9 TAKE LEAVE WITHOUT PAY FOR THE BALANCE OF THE NINE-WEEK PERIOD.]

10 * Sec. 9. AS 39.20 is amended by adding a new section to read:

11 Sec. 39.20.305. FAMILY AND HEALTH LEAVE. (a) An officer or employee of the
12 state who is otherwise qualified to take leave of absence may take family leave because of a
13 serious health condition for a total of 18 workweeks during any 24-month period. An otherwise
14 qualified officer or employee may take family leave because of pregnancy and childbirth or
15 adoption for a total of 18 workweeks within a 12-month period; the right to take leave for this
16 reason expires on the date one year after the birth or placement of the child. An officer or
17 employee taking leave under this section shall use accrued paid leave until the officer or
18 employee has only five days of paid leave remaining. The officer or employee may choose
19 whether to retain a balance of five days of paid leave and take the remaining leave as unpaid
20 leave or whether to exhaust the paid leave balance. After reducing accrued paid leave as required
21 by this subsection, the officer or employee may take leave without pay for the balance of the
22 family leave. If the employee is entitled to a longer period of time under AS 23.10.500, then the
23 longer period applies. An eligible employee is entitled to take family leave

24 (1) because of pregnancy and the birth of a child of the employee or the
25 placement of a child, other than the employee's stepchild, with the employee for adoption; the
26 department or agency may require that an employee using family leave under this paragraph take
27 the leave in a single block of time;

28 (2) in order to care for the employee's child, spouse, or parent who has a serious
29 health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster
30 child, stepchild, or legal ward; and

31 (3) because of the employee's own serious health condition.

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1 (b) If the necessity for family leave under (a) of this section is foreseeable based on an
2 expected birth or adoption or on planned medical treatment or supervision, the employee shall
3 provide the employee's department or agency head with prior notice of the expected need for
4 leave in a manner that is reasonable and practicable. If the necessity for leave under this section
5 is foreseeable based on planned medical treatment or supervision, the employee shall also make
6 a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the
7 operations of the state department or agency, subject to the approval of the health care provider
8 of the employee or the employee's child, spouse, or parent.

9 (c) Notwithstanding (a) of this section, if a parent or child of two employees employed
10 by the state has a serious health condition, the state is not required to grant family leave to both
11 employees simultaneously.

12 (d) In this section, "child," "health care provider," "parent," and "serious health condition"
13 have the meanings given in AS 23.10.550.

14 * Sec. 10. AS 42.40.860 is amended by adding a new subsection to read:

15 (d) Notwithstanding any provision of AS 42.40.710 - 42.40.890 to the contrary, an
16 agreement between the corporation and an employee bargaining organization that does not
17 contain benefit provisions at least as beneficial to the employee as those provided by
18 AS 23.10.500 - 23.10.550 shall be considered to contain the benefit provisions of those statutes.

19 * Sec. 11. Notwithstanding AS 14.20.590(b), enacted by sec. 5 of this Act, AS 23.10.500 - 23.10.550,
20 enacted by sec. 6 of this Act, AS 23.40.200(g), enacted by sec. 7 of this Act, and AS 42.40.860(d)
21 enacted by sec. 10 of this Act, a collective bargaining agreement in effect on the effective date of this
22 Act that does not comply with AS 23.10.500 - 23.10.550 remains valid until the agreement expires.
23 However, the contract may not be extended by agreement or renewed unless it complies with
24 AS 14.20.590(b), AS 23.10.530, AS 23.40.200(g), or AS 42.40.860(d), as applicable.