

1 IN THE HOUSE

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2

HOUSE BILL NO. 155

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to employee health insurance cover-
7 age, employment rights based on pregnancy, child-
8 birth, and related conditions, and family leave."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

11 (1) the number of single-parent households and two-parent house-
12 holds in which the single parent or both parents work outside the home is
13 increasing significantly;

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

17 (3) the lack of employment opportunities to accommodate working
18 parents can force individuals to choose between job security and parenting;
19 and

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

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

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

25 (2) to entitle employees to take reasonable leave for the birth
26 or adoption of a child and for the care of a child, spouse, or parent who
27 has a serious health condition; and

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

29 * Sec. 2. AS 14.20.590 is amended by adding a new subsection to read:

1 (b) Notwithstanding any provision of AS 14.20.550 - 14.20.610 to
2 the contrary, a negotiations agreement that conflicts with AS 18.80.-
3 225, concerning benefits and leave for pregnancy, childbirth, related
4 medical conditions, and family leave, is void unless the agreement
5 provides benefits comparable to those provided by AS 18.80.225.

6 * Sec. 3. AS 18.80 is amended by adding a new section to read:

7 Sec. 18.80.225. PREGNANCY, CHILDBIRTH, AND RELATED CONDITIONS.

8 (a) An employer shall grant an employee whose health is affected by
9 pregnancy, childbirth, or a related medical condition the same employ-
10 ment benefits and privileges that the employer grants to other employ-
11 ees with similar ability to work who are not so affected, including
12 allowing the employee to take disability or sick leave or other ac-
13 crued leave that the employer makes available to temporarily disabled
14 employees. However, except as provided in (e) of this section, an em-
15 ployer is not required to provide an employee health insurance cover-
16 age for the medical costs of pregnancy, childbirth, or a related
17 medical condition. The inclusion in health insurance coverage of
18 provisions or coverage relating to medical costs of pregnancy, child-
19 birth, or a related medical condition does not require the inclusion
20 of other provisions or coverage. Coverage of a related medical condi-
21 tion is not required by virtue of coverage of medical costs of preg-
22 nancy, childbirth, or another related medical condition.

23 (b) An employee is eligible to take family leave if the employee
24 has been employed by the employer for at least 35 hours a week for at
25 least six consecutive months or for at least 17 1/2 hours a week for
26 at least 12 consecutive months immediately preceding the leave. An
27 employer shall permit an eligible employee to take family leave for a
28 total of 18 workweeks during any 24-month period. The leave may be
29 unpaid leave. However, the employee may choose to substitute, or the

1 employer may require the employee to substitute, accrued paid vacation
2 leave, sick leave, personal leave, or other paid leave during this
3 period. If the employee is entitled to a longer period of time under
4 (a) of this section, then the longer period applies. An eligible
5 employee is entitled to take family leave

6 (1) because of pregnancy, the birth of a child of the
7 employee, or the placement of a child, other than the employee's
8 stepchild, with the employee for adoption, in which case the entitle-
9 ment to leave expires at the end of the 12-month period beginning
10 after the date of the birth or placement; and

11 (2) in order to care for the employee's child, spouse, or
12 parent who has a serious health condition; in this paragraph, "child"
13 includes the employee's biological, adopted, or foster child, step-
14 child, legal ward, or a child to whom the employee stands in loco
15 parentis.

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

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

1 (e) During the time that an employee is on leave under this
2 section, the employer shall maintain coverage under any group health
3 plan at the level and under the conditions that coverage would have
4 been provided if the employee had been employed continuously from the
5 date the leave began to the date the employee returns from leave under
6 (f) of this section. However, the employer may require that the
7 employee pay all of the costs for maintaining health insurance cover-
8 age during a period of unpaid leave.

9 (f) Unless the employer's business circumstances have changed to
10 make it impossible or unreasonable, when an employee returns from
11 leave under (a) or (b) of this section, the employer shall restore the
12 employee

13 (1) to the position of employment held by the employee when
14 the leave began; or

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

17 (g) An employer may not refuse to temporarily transfer a preg-
18 nant employee to an existing, unfilled position that is less strenuous
19 or less hazardous if the employee requests the transfer, the transfer
20 is recommended by a licensed health care provider, the employee is
21 qualified and immediately able to perform the job, and the transfer
22 will not subject the employer to legal liability. An employer shall
23 compensate an employee who requests a transfer under this subsection
24 at a rate at least equal to the lesser of the rate, as adjusted by
25 changes to compensation that apply generally to the work force, at
26 which

27 (1) the employee was compensated immediately before re-
28 questing the transfer; or

29 (2) the position into which the employee transfers is

1 compensated.

2 (h) This section does not affect any other provision of law
3 relating to sex discrimination, pregnancy, or parenthood.

4 (i) This section applies to an employer only if the employer
5 employed at least 15 employees for each working day during 20 consecu-
6 tive workweeks in either the current or the preceding calendar year.
7 However, this section does not apply to an employer's small business
8 facility if the total number of employees employed within 50 road
9 miles of the small business facility, including those employed at the
10 facility during the 20 workweeks was fewer than 15.

11 (j) An employer may refuse to grant an employee family leave
12 under (b) of this section if the employer establishes that

13 (1) the salary received by the employee places the employee
14 in the top 10 percent of all employees in facilities of the employer
15 covered by this section; and

16 (2) the employee has skills, knowledge, or experience that
17 cannot be provided satisfactorily by other employees of the employer
18 during the period of the proposed leave and that are necessary to the
19 employer during that time to meet a business necessity.

20 (k) A violation of this section constitutes unlawful discrimina-
21 tion under this chapter.

22 (l) The provisions of this section are subject to collective
23 bargaining. However, a collective bargaining contract is void unless
24 it contains terms giving employees benefits comparable to those pro-
25 vided by this section.

26 (m) In this section,

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

28 (A) under 18 years of age; or

29 (B) 18 years of age or older and incapable of self-

1 care because of mental or physical disability;

2 (2) "health care provider" has the meaning given in AS 18.-
3 23.070;

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

6 (4) "serious health condition" means an illness, injury,
7 impairment, or physical or mental condition that involves

8 (A) inpatient care in a hospital, hospice, or residen-
9 tial health care facility; or

10 (B) continuing treatment or continuing supervision by
11 a health care provider;

12 (5) "small business facility" means a facility of an em-
13 ployer at which fewer than 15 employees were employed for each working
14 day during 20 consecutive workweeks in the current or preceding calen-
15 dar year.

16 * Sec. 4. AS 23.40.200 is amended by adding a new subsection to read:

17 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to
18 the contrary, an agreement between the state and an employee bargain-
19 ing organization representing employees of the state that conflicts
20 with AS 18.80.225, concerning benefits and leave for pregnancy, child-
21 birth, related medical conditions, and family leave, is void unless
22 the agreement provides benefits comparable to those provided by
23 AS 18.80.225.

24 * Sec. 5. AS 39.20.225(b)(4) is amended to read:

25 (4) Pregnancy and childbirth is a medical reason for a
26 female officer or employee to take personal leave. [A FEMALE OFFICER
27 OR EMPLOYEE, OTHERWISE QUALIFIED FOR A LEAVE OF ABSENCE, IS ENTITLED
28 TO TAKE A MAXIMUM OF NINE WEEKS LEAVE IMMEDIATELY PRECEDING AND FOL-
29 LOWING CHILDBIRTH. IF THE OFFICER'S OR EMPLOYEE'S ACCRUED PERSONAL

1 LEAVE IS INSUFFICIENT FOR THIS PURPOSE, THE OFFICER OR EMPLOYEE IS
2 ENTITLED TO TAKE LEAVE WITHOUT PAY FOR THE BALANCE OF THE NINE-WEEK
3 PERIOD.]

4 * Sec. 6. AS 39.20 is amended by adding a new section to read:

5 Sec. 39.20.305. FAMILY LEAVE. (a) An officer or employee who
6 is otherwise qualified to take leave of absence may take family leave
7 for a total of 18 workweeks during any 24-month period. An officer or
8 employee taking leave under this section shall use accrued personal
9 leave. After exhausting accrued personal leave, the officer or em-
10 ployee may take leave without pay for the balance of the 18-week
11 period. If the employee is entitled to a longer period of time under
12 AS 18.80.225(a), then the longer period applies. An eligible employee
13 is entitled to take family leave

14 (1) because of pregnancy, the birth of a child of the
15 employee, or the placement of a child, other than the employee's
16 stepchild, with the employee for adoption, in which case the entitle-
17 ment to leave expires at the end of the 12-month period beginning
18 after the date of the birth or placement; and

19 (2) in order to care for the employee's child, spouse, or
20 parent who has a serious health condition; in this paragraph, "child"
21 includes the employee's biological, adopted, or foster child, step-
22 child, legal ward, or a child to whom the employee stands in loco
23 parentis.

24 (b) If the necessity for family leave under (a) of this section
25 is foreseeable based on an expected birth or adoption or on planned
26 medical treatment or supervision, the employee shall provide the
27 employee's department or agency head with prior notice of the expected
28 need for leave in a manner that is reasonable and practicable. If the
29 necessity for leave under this section is foreseeable based on planned

1 medical treatment or supervision, the employee shall also make a
2 reasonable effort to schedule the treatment or supervision so as not
3 to disrupt unduly the operations of the state department or agency,
4 subject to the approval of the health care provider of the employee's
5 child, spouse, or parent.

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

10 (d) A state department or agency may refuse to grant an employee
11 family leave under (a) of this section if the department or agency
12 establishes that

13 (1) the salary received by the employee places the employee
14 in the top 10 percent of employees within that department or agency;
15 and

16 (2) the employee has skills, knowledge, or experience that
17 cannot be provided satisfactorily by other state employees during the
18 period of the proposed leave and that are necessary to the department
19 or agency during that time to meet a business necessity.

20 (e) In this section, "child," "health care provider," "parent,"
21 and "serious health condition" have the meanings given in AS 18.80.-
22 225.

23 * Sec. 7. Notwithstanding AS 14.20.590(b), enacted by sec. 2 of this
24 Act, AS 18.80.225, enacted by sec. 3 of this Act, and AS 23.40.200(g),
25 enacted by sec. 4 of this Act, a collective bargaining agreement in effect
26 on the effective date of this Act that contains terms that do not comply
27 with AS 18.80.225 remains valid until the agreement expires. However, the
28 contract may not be extended by agreement or renewed unless it complies
29 with AS 18.80.225 and AS 14.20.590(b) or AS 23.40.200(g), if applicable.