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Original sponsors: Brown, Ulmer,  
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BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 155 (L&C)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to employment rights based on preg-

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nancy, childbirth, and related conditions, and family

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leave."

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

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

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(1) generally, parents are the best providers of care for their

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children;

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(2) the number of single-parent households and two-parent house-

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holds in which the single parent or both parents work outside the home is

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increasing significantly;

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(3) it is important to the development of a child and to the

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family unit that parents be able to participate in early childrearing and

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the care of a child who has a serious health condition;

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(4) the lack of employment opportunities to accommodate working

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parents can force individuals to choose between job security and parenting;

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and

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(5) it is important for the family unit that a person be able to

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care for a parent or spouse who has a serious health condition.

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

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(1) to balance the demands of the workplace with the needs of

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families, and to promote stability and economic security in families;

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(2) to entitle employees to take reasonable leave for the birth

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or adoption of a child and for the care of a child, spouse, or parent who

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has a serious health condition; and

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

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

3 (b) Notwithstanding any provision of AS 14.20.550 - 14.20.610 to  
4 the contrary, a negotiations agreement between an employer subject to  
5 AS 23.10.500 - 23.10.550 and an employee bargaining organisation that  
6 conflicts with AS 23.10.500 - 23.10.550, concerning benefits and leave  
7 for pregnancy, childbirth, related medical conditions, and family  
8 leave, is void unless the agreement provides benefits comparable to  
9 those provided by AS 23.10.500 - 23.10.550.

10 \* Sec. 3. AS 23.10 is amended by adding new sections to read:

11 ARTICLE 7. PREGNANCY, CHILDBIRTH, AND FAMILY LEAVE.

12 Sec. 23.10.500. EMPLOYMENT BENEFITS AND PRIVILEGES FOR FAMILY  
13 CARE. (a) An employer shall grant an employee whose health is af-  
14 fected by pregnancy, childbirth, or a related medical condition the  
15 same employment benefits and privileges that the employer grants to  
16 other employees with similar ability to work who are not so affected,  
17 including allowing the employee to take disability or sick leave or  
18 other accrued leave that the employer makes available to temporarily  
19 disabled employees.

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

1 (a) of this section, then the longer period applies. An eligible  
2 employee is entitled to take family leave

3 (1) because of pregnancy, the birth of a child of the  
4 employee, or the placement of a child, other than the employee's  
5 stepchild, with the employee for adoption, in which case the entitle-  
6 ment to leave expires at the end of the 12-month period beginning  
7 after the date of the birth or placement; an employer may require that  
8 an employee using family leave under this paragraph take the leave in  
9 a single block of time; and

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

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

19 (d) During the time that an employee is on leave under this  
20 section, the employer shall maintain coverage under any group health  
21 plan at the level and under the conditions that coverage would have  
22 been provided if the employee had been employed continuously from the  
23 date the leave began to the date the employee returns from leave under  
24 (e) of this section. However, the employer may require that the  
25 employee pay all of the costs for maintaining health insurance cover-  
26 age during a period of unpaid leave.

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

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

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

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

11 (g) 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 Sec. 23.10.510. EMPLOYEE NOTICE. If the necessity for leave  
21 under AS 23.10.500 is foreseeable based on an expected birth or adop-  
22 tion or on planned medical treatment or supervision, the employee  
23 shall provide the employer with prior notice of the expected need for  
24 leave in a manner that is reasonable and practicable. If the necessi-  
25 ty for leave under that section is foreseeable based on planned medi-  
26 cal treatment or supervision, the employee shall also make a reason-  
27 able effort to schedule the treatment or supervision so as not to  
28 disrupt unduly the operations of the employer, subject to the approval  
29 of the health care provider of the employee's child, spouse, or

1 parent.

2 Sec. 23.10.520. EMPLOYEE TRANSFER. (a) A pregnant employee may  
3 request a transfer to a suitable position under this section. An  
4 employer may not fill the position with a person other than the  
5 requesting employee until the employer has offered the position to the  
6 employee and the employee has refused the offer. A position is suit-  
7 able if

8 (1) it is an existing unfilled position in the same admin-  
9 istrative division in which the employee is currently employed and is  
10 less strenuous or less hazardous than the employee's current position;

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

13 (3) the employee is qualified and immediately able to  
14 perform the duties of the position; and

15 (4) the transfer will not subject the employer to legal  
16 liability.

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

21 (1) the employee was compensated immediately before re-  
22 questing the transfer; or

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

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

28 (b) The provisions of AS 23.10.500 - 23.10.550 are subject to  
29 collective bargaining. However, a collective bargaining contract is

1 void unless it contains terms giving employees benefits comparable to  
2 those provided by AS 23.10.500 - 23.10.550.

3 Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

4 (a) A person aggrieved by a denial of a right or privilege granted by  
5 AS 23.10.500 - 23.10.540 may file a complaint with the department.

6 (b) The department shall informally, promptly, and impartially  
7 investigate the matters set out in a filed complaint. If the investi-  
8 gator determines that the allegations are supported by substantial  
9 evidence, the investigator shall immediately try to eliminate the  
10 denial of rights or privileges by conference, conciliation, and per-  
11 suasion.

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

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

14 (A) under 18 years of age; or

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

17 (2) "employer" means a person, including the state and a  
18 political subdivision of the state, who employed at least 21 employees  
19 in the state for each working day during 20 consecutive workweeks in  
20 either the current or the preceding calendar year;

21 (3) "health care provider" has the meaning given in AS 18.-  
22 23.070;

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

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

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

29 (B) continuing treatment or continuing supervision by

1 a health care provider;

2 (6) "small business facility" means a facility of an em-  
3 ployer at which fewer than 21 employees were employed for each working  
4 day during 20 consecutive workweeks in the current or preceding calen-  
5 dar year;

6 (7) "state" includes the University of Alaska and the  
7 executive, legislative, and judicial branches of state government  
8 including public and quasi-public corporations and authorities estab-  
9 lished by law.

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

11 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to  
12 the contrary, an agreement between an employer subject to AS 23.10.-  
13 500 - 23.10.550 and an employee bargaining organization that conflicts  
14 with AS 23.10.500 - 23.10.550, concerning benefits and leave for preg-  
15 nancy, childbirth, related medical conditions, and family leave, is  
16 void unless the agreement provides benefits comparable to those pro-  
17 vided by AS 23.10.500 - 23.10.550.

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

19 (4) Pregnancy and childbirth is a medical reason for a  
20 female officer or employee to take personal leave. [A FEMALE OFFICER  
21 OR EMPLOYEE, OTHERWISE QUALIFIED FOR A LEAVE OF ABSENCE, IS ENTITLED  
22 TO TAKE A MAXIMUM OF NINE WEEKS LEAVE IMMEDIATELY PRECEDING AND FOL-  
23 LOWING CHILDBIRTH. IF THE OFFICER'S OR EMPLOYEE'S ACCRUED PERSONAL  
24 LEAVE IS INSUFFICIENT FOR THIS PURPOSE, THE OFFICER OR EMPLOYEE IS  
25 ENTITLED TO TAKE LEAVE WITHOUT PAY FOR THE BALANCE OF THE NINE-WEEK  
26 PERIOD.]

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

28 Sec. 39.20.305. FAMILY LEAVE. (a) An officer or employee who  
29 is otherwise qualified to take leave of absence may take family leave

1 for a total of 18 workweeks during any 24-month period. An officer or  
2 employee taking leave under this section shall use accrued personal  
3 leave. After exhausting accrued personal leave, the officer or em-  
4 ployee may take leave without pay for the balance of the 18-week  
5 period. If the employee is entitled to a longer period of time under  
6 AS 23.10.500, then the longer period applies. An eligible employee is  
7 entitled to take family leave

8 (1) because of pregnancy, the birth of a child of the  
9 employee, or the placement of a child, other than the employee's  
10 stepchild, with the employee for adoption, in which case the entitle-  
11 ment to leave expires at the end of the 12-month period beginning  
12 after the date of the birth or placement; the department or agency may  
13 require that an employee using family leave under this paragraph take  
14 the leave in a single block of time; and

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

20 (b) If the necessity for family leave under (a) of this section  
21 is foreseeable based on an expected birth or adoption or on planned  
22 medical treatment or supervision, the employee shall provide the  
23 employee's department or agency head with prior notice of the expected  
24 need for leave in a manner that is reasonable and practicable. If the  
25 necessity for leave under this section is foreseeable based on planned  
26 medical treatment or supervision, the employee shall also make a  
27 reasonable effort to schedule the treatment or supervision so as not  
28 to disrupt unduly the operations of the state department or agency,  
29 subject to the approval of the health care provider of the employee's

1 child, spouse, or parent.

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

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

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

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

16 (e) In this section, "child," "health care provider," "parent,"  
17 and "serious health condition" have the meanings given in AS 23.10.-  
18 550.

19 \* Sec. 7. Notwithstanding AS 14.20.590(b), enacted by sec. 2 of this  
20 Act, AS 23.10.500 - 23.10.550, enacted by sec. 3 of this Act, and AS 23.-  
21 40.200(g), enacted by sec. 4 of this Act, a collective bargaining agreement  
22 in effect on the effective date of this Act that contains terms that do not  
23 comply with AS 23.10.500 - 23.10.550 remains valid until the agreement  
24 expires. However, the contract may not be extended by agreement or renewed  
25 unless it complies with AS 14.20.590(b) or AS 23.40.200(g), as applicable.