

Original sponsors: Brown, Ulmer,
Gruenberg, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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CS FOR HOUSE BILL NO. 155 (HESS)

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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 pregnancy, childbirth, and related conditions, and family leave."

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

10 * Section 1. SHORT TITLE. This Act may be known as the Alaska Family
11 Protection Act.

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

13 (1) generally, parents are the best providers of care for their
14 children;

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

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

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

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

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

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

28 (2) to entitle employees to take reasonable leave for the birth
29

1 or adoption of a child and for the care of a child, spouse, or parent who
2 has a serious health condition; and

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

4 * Sec. 3. AS 14.20.590 is amended by adding a new subsection to read:

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

12 * Sec. 4. AS 23.10 is amended by adding new sections to read:

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

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

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

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

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

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

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

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

29 (e) Unless the employer's business circumstances have changed to

1 make it impossible or unreasonable, when an employee returns from
2 leave under this section, the employer shall restore the employee

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

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

7 (f) 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, was fewer than 21 during the 20 consecutive workweeks in
11 which the employer employed at least 21 employees at all business
12 facilities.

13 (g) An employer may refuse to grant an employee family leave
14 under (b) of this section if the employer establishes that

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

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

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

1 disrupt unduly the operations of the employer, subject to the approval
2 of the health care provider of the employee's child, spouse, or par-
3 ent.

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

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

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

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

17 (4) the transfer will not subject the employer to legal
18 liability.

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

23 (1) the employee was compensated immediately before re-
24 questing the transfer; or

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

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

1 (b) The provisions of AS 23.10.500 - 23.10.550 are subject to
2 collective bargaining. However, a collective bargaining contract is
3 void unless it contains terms giving employees benefits comparable to
4 those provided by AS 23.10.500 - 23.10.550.

5 Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

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

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

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

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

16 (A) under 18 years of age; or

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

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

23 (3) "health care provider" has the meaning given in AS 18.-
24 23.070;

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

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

29 (A) inpatient care in a hospital, hospice, or

1 residential health care facility; or

2 (B) continuing treatment or continuing supervision by
3 a health care provider;

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

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

12 * Sec. 5. AS 23.40.200 is amended by adding a new subsection to read:

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

20 * Sec. 6. AS 39.20.225(b)(4) is amended to read:

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

29 * Sec. 7. AS 39.20 is amended by adding a new section to read:

1 Sec. 39.20.305. FAMILY LEAVE. (a) An officer or employee who
2 is otherwise qualified to take leave of absence may take family leave
3 for a total of 18 workweeks during any 24-month period. An officer or
4 employee taking leave under this section shall use accrued personal
5 leave. After exhausting accrued personal leave, the officer or em-
6 ployee may take leave without pay for the balance of the 18-week
7 period. If the employee is entitled to a longer period of time under
8 AS 23.10.500, then the longer period applies. An eligible employee is
9 entitled to take family leave

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

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

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

1 to disrupt unduly the operations of the state department or agency,
2 subject to the approval of the health care provider of the employee's
3 child, spouse, or parent.

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

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

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

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

18 (e) In this section, "child," "health care provider," "parent,"
19 and "serious health condition" have the meanings given in AS 23.10.-
20 550.

21 * Sec. 8. Notwithstanding AS 14.20.590(b), enacted by sec. 3 of this
22 Act, AS 23.10.500 - 23.10.550, enacted by sec. 4 of this Act, and AS 23.-
23 40.200(g), enacted by sec. 5 of this Act, a collective bargaining agreement
24 in effect on the effective date of this Act that contains terms that do not
25 comply with AS 23.10.500 - 23.10.550 remains valid until the agreement
26 expires. However, the contract may not be extended by agreement or renewed
27 unless it complies with AS 14.20.590(b) or AS 23.40.200(g), as applicable.