

Original sponsor(s): REP. BROWN, Ulmer, Gruenberg, Ellis, Spohnholz, Goll

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 155 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to employment rights based on preg-
7 nancy, childbirth and related conditions, sick leave,
8 and family leave."

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 house-
16 holds in which the single parent or both parents work outside the home is
17 increasing significantly;

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

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

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

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

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

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

1 or adoption of a child, for the care of a child, spouse, or parent who has
2 a serious health condition, and in case of their own serious health condi-
3 tion; and

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

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

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

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

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

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

24 (b) Notwithstanding any provision of AS 14.20.550 - 14.20.610 to
25 the contrary, a negotiations agreement between an employer subject to
26 AS 23.10.500 - 23.10.550 and an employee bargaining organization that
27 conflicts with the benefit provisions of AS 23.10.500 - 23.10.550 is
28 void unless the agreement provides benefits at least as beneficial to
29 the employee as those provided by AS 23.10.500 - 23.10.550 or unless

1 the commissioner of education has waived compliance with AS 23.10.-
2 500 - 23.10.550 under AS 23.10.530(c).

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

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

5 Sec. 23.10.500. EMPLOYMENT BENEFITS AND PRIVILEGES FOR HEALTH
6 AND FAMILY CARE. (a) An employer shall grant an employee whose
7 health is affected by pregnancy, childbirth, or a related medical
8 condition the same employment benefits and privileges that the em-
9 ployer grants to other employees with similar ability to work who are
10 not so affected, including allowing the employee to take disability or
11 sick leave or other accrued leave that the employer makes available to
12 temporarily disabled employees.

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

25 (1) because of pregnancy, the birth of a child of the
26 employee, or the placement of a child, other than the employee's
27 stepchild, with the employee for adoption, in which case the entitle-
28 ment to leave expires at the end of the 12-month period beginning
29 after the date of the birth or placement; an employer may require that

1 an employee using family leave under this paragraph take the leave in
2 a single block of time;

3 (2) in order to care for the employee's child, spouse, or
4 parent who has a serious health condition; in this paragraph, "child"
5 includes the employee's biological, adopted, or foster child, step-
6 child, legal ward, or a child to whom the employee stands in loco
7 parentis; and

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

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

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

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

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

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

28 (f) This section does not apply to an employer's small business
29 facility if the total number of employees employed within 50 road

1 miles of the small business facility, including those employed at the
2 facility, was fewer than 21 during the 20 consecutive workweeks in
3 which the employer employed at least 21 employees at all business
4 facilities.

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

7 (1) the salary received by the employee places the employee
8 in the top 10 percent of all employees in facilities of the employer
9 covered by this section; and

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

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

25 Sec. 23.10.520. EMPLOYEE TRANSFER. (a) A pregnant employee may
26 request a transfer to a suitable position under this section. An
27 employer may not fill the position with a person other than the re-
28 questing employee until the employer has offered the position to the
29 employee and the employee has refused the offer. A position is

1 suitable if

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

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

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

9 (4) the transfer will not subject the employer to legal
10 liability.

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

15 (1) the employee was compensated immediately before re-
16 questing the transfer; or

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

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

22 (b) The provisions of AS 23.10.500 - 23.10.550 are subject to
23 collective bargaining. However, except as provided in (c) of this
24 section, a collective bargaining contract is void unless it contains
25 terms giving employees benefits at least as beneficial to the employee
26 as those provided by AS 23.10.500 - 23.10.550.

27 (c) The commissioner of education may approve a collective
28 bargaining agreement entered into between a school district or a
29 regional educational attendance area and a bargaining organization

1 representing certificated employees that does not meet the leave
2 requirements of AS 23.10.500 - 23.10.550, if the district or atten-
3 dance area establishes to the satisfaction of the commissioner that a
4 variance from the requirements of AS 23.10.500 - 23.10.550 is neces-
5 sary to avoid a hardship on the school district based on the lack of
6 qualified, available substitute teachers to replace teachers on leave
7 under AS 23.10.500 - 23.10.550 or the lack of available housing for
8 replacement teachers who do not live in the community.

9 Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS.

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

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

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

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

20 (A) under 18 years of age; or

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

23 (2) "employer" means a person, including the state and a
24 political subdivision of the state, who employed at least 21 employees
25 in the state for each working day during any period of 20 consecutive
26 workweeks in the preceding two calendar years;

27 (3) "health care provider" has the meaning given in AS 18.-
28 23.070;

29 (4) "parent" means a biological or adoptive parent, a

1 parent-in-law, or a stepparent;

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

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

6 (B) continuing treatment or continuing supervision by
7 a health care provider;

8 (6) "small business facility" means a facility of an em-
9 ployer that did not employ 21 or more employees during any period of
10 20 consecutive workweeks in the preceding two calendar years;

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

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

16 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to
17 the contrary, an agreement between an employer subject to AS 23.10.-
18 500 - 23.10.550 and an employee bargaining organization that conflicts
19 with the benefit provisions of AS 23.10.500 - 23.10.550 is void unless
20 the agreement provides benefits at least as beneficial to the employee
21 as those provided by AS 23.10.500 - 23.10.550.

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

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

1 PERIOD.]

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

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

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

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; and

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

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

1 necessity for leave under this section is foreseeable based on planned
2 medical treatment or supervision, the employee shall also make a
3 reasonable effort to schedule the treatment or supervision so as not
4 to disrupt unduly the operations of the state department or agency,
5 subject to the approval of the health care provider of the employee or
6 the employee's child, spouse, or parent.

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

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

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

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

21 (e) In this section, "child," "health care provider," "parent,"
22 and "serious health condition" have the meanings given in AS 23.10.-
23 550.

24 * Sec. 10. Notwithstanding AS 14.20.590(b), enacted by sec. 5 of this
25 Act, AS 23.10.500 - 23.10.550, enacted by sec. 6 of this Act, and AS 23.-
26 40.200(g), enacted by sec. 7 of this Act, a collective bargaining agreement
27 in effect on the effective date of this Act that contains terms that do not
28 comply with AS 23.10.500 - 23.10.550 remains valid until the agreement
29 expires. However, the contract may not be extended by agreement or renewed

1 unless it complies with AS 14.20.590(b), AS 23.10.530, or AS 23.40.200(g),
2 as applicable.