
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2624 **Hearing Date:** June 11, 2024
Author: Waldron
Version: April 24, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Prisoners: employment: bereavement*

HISTORY

Source: Author

Prior Legislation: AB 1949 (Low), Ch. 767, Stats. 2022

Support: ACLU California Action; California Public Defenders Association; Ella Baker Center for Human Rights; Universidad Popular

Opposition: None known

Assembly Floor Vote: 65 - 0

PURPOSE

The purpose of this bill is to allow a person incarcerated in state prison to take paid bereavement leave after the death of an immediate family member, as defined, and except as specified.

Existing law prohibits involuntary servitude except to punish crime. (Cal. Const., art. I, § 6.)

Existing law authorizes the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to enter into contracts with public entities, nonprofit or for profit organizations, and businesses for the purpose of conducting programs which use the labor of incarcerated individuals. (Cal. Const., art. XIV, § 5.)

Existing law provides that CDCR require every able-bodied incarcerated individual imprisoned in any state prison as many hours of faithful labor in each day and every day during the person's term of imprisonment as is prescribed by the rules and regulations of the Secretary. (Pen. Code, § 2700.)

Existing law authorizes CDCR to employ incarcerated individuals for the rendering of services that are needed by the state or any political subdivision thereof, including any county, district, city, school or other public use, or for use by the federal government, or any agency or department thereof, or that may be needed for use by the government of any other state, or any department, agency, or corporation thereof, and allows CDCR to enter into contracts for this purpose. (Pen. Code, § 2701, subd. (a).)

Existing law allows CDCR to employ incarcerated individuals for the rendering of emergency services for the preservation of life or property within the state, whether that property is owned by public entities or private citizens, when a county level state of emergency has been declared due to a natural disaster and the local governing board has requested assistance. (Pen. Code, § 2701, subd. (b).)

Existing law establishes the Prison Industry Authority (PIA), a work program for incarcerated persons to provide goods and services used by CDCR. (Pen. Code, § 2800.)

Existing law requires that the compensation schedule for incarcerated employees in the PIA program be based on quantity and quality of work performed and shall be required, but in no event shall that compensation exceed one-half the minimum wage provided in the Labor Code, except as otherwise provided. (Pen. Code, § 2811.)

Existing law states that incarcerated persons not engaged in PIA programs, but who are engaged in productive labor outside of such programs may be compensated in like manner. (Pen. Code, § 2700.)

Existing law requires private employers with five or more employees and public sector employers to provide employees with at least 30 days of service up to five unpaid days of bereavement leave upon the death of a family member. (Gov. Code, § 12945.7, subd. (b).)

Existing law defines “family member,” for purposes of bereavement leave as a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. (Gov. Code, § 12945.7, subd. (a)(3).)

Existing law permits an employer to request that the employee provide documentation of the death of the family member. Defines “documentation” as including, but not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency. (Gov. Code, § 12945.7, subd. (f).)

This bill requires an incarcerated person imprisoned in a state prison to be allowed relief from prison employment after the death of an immediate family member of the incarcerated person.

This bill requires an incarcerated person who is enrolled in an educational program instead of, or in addition to, being employed, to be granted bereavement leave from the educational program after the death of an immediate family member of the incarcerated person.

This bill requires the incarcerated person to request bereavement leave from the warden or their designee.

This bill requires the incarcerated person to provide substantiation to support the request for bereavement leave.

This bill requires the warden to approve or deny bereavement leave as soon as practicable upon receiving the request and substantiation.

This bill requires that the incarcerated person be paid their regular compensation for the hours and days the individual is scheduled to work during the period of relief.

This bill limits bereavement leave to three days for any one occurrence.

This bill requires the incarcerated person to have access to a mental health professional during bereavement leave to the extent resources are available.

This bill requires the warden or other administrator of the facility to grant bereavement leave unless the incarcerated person is employed in a position requiring emergency response, including, but not limited to, a firefighter, and there is an exigent circumstance requiring their employment during the period requested by the incarcerated person.

This bill requires the warden or other administrator of the facility to grant bereavement leave to be granted as soon as practicable after the exigent circumstance has ended.

This bill specifies that its provisions do not authorize an incarcerated person to leave the prison facility.

This bill prohibits the prison from denying an incarcerated person access to other regularly scheduled activities, including, but not limited to, recreation, meals, group sessions, or counseling.

This bill defines “immediate family” as “any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who, within six months before the commission of the crime for which the person was convicted to state prison, regularly resided in the household.”

COMMENTS

1. Need For This Bill

According to the author:

In the passing of a close family member, every individual deserves the right to grieve; a need that goes beyond the walls of incarceration. By introducing Section 2710 to the Penal Code, a crucial step is taken towards supporting individuals dealing with loss. This provision will ensure they are able to grieve for three days with dignity, unburdened from the weight of their work duties without financial concern. During this time, they receive compensation for missed work, alleviating any further worries. By allowing them to focus solely on their grieving process, it demonstrates a commitment to treat all individuals with empathy, regardless of their circumstances.

2. Prison Labor Generally

The Thirteenth Amendment of the U.S. Constitution was ratified in 1865 and prohibited slavery and involuntary servitude. However, an exception was allowed if involuntary servitude was imposed as punishment for a crime. Article I, section 6, of the California Constitution contains the same prohibitions on slavery and involuntary servitude and the same exception for involuntary servitude as punishment for crime. The California Supreme Court has interpreted the prohibition on slavery and involuntary servitude contained in Article I, section 6 of the

California Constitution to be coextensive with the protection afforded by the Thirteenth Amendment. (*Moss v. Superior Court* (1998), 17 Cal. 4th 396, 418.) Moreover, federal courts have held that the U.S. Constitution does not prohibit a requirement that incarcerated persons must work nor does it provide an incarcerated person a right to wages for work done in custody. Courts have consistently held that individuals incarcerated in state prison are not employees entitled to minimum wage. (*Burleson v. California* (1996) 83 F.3d 311.)

In addition to relying on the exception to involuntary servitude for punishment for a crime, federal courts have found that work done by an incarcerated person does not constitute “involuntary servitude” when the person has a choice to work. For example, the Fifth District Court of Appeals held that participation in a work release program did not constitute involuntary servitude, because the incarcerated persons were not “compelled” to participate in the work release program. The court acknowledged that the choice of whether to work outside of the jail for twenty dollars a day or remain inside the jail and earn nothing may have indeed been “painful” and quite possibly illegal under state law, but stated that the individuals were not forced to work or continued to work against their will. (*Watson v. Graves* (1990) 909 F.2d 1549, 1552.)

3. Work and Wages for the Incarcerated Population in California Prisons

Penal Code section 2700 provides that CDCR “require of every able-bodied prisoner imprisoned in any state prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations [of the department].” (*See also* Cal. Code Regs., tit. 15, § 3040, subd. (a).) Upon arrival at a prison reception center, incarcerated individuals go through a classification process. During the classification process, incarcerated individuals are placed on waiting lists for jobs and rehabilitative programs. The classification process for jobs continues throughout an individual’s prison term. Incarcerated individuals cannot refuse a job assignment and may be disciplined for refusing or failing to show up to work. Refusal to accept or perform in a work or training assignment can also lead to reduced privileges, including limitations on visits, phone calls, canteen purchases, and yard, entertainment and recreation access. (<https://www.cdcr.ca.gov/ombuds/ombuds/entering-a-prison-faqs/>) Notably, incarcerated individuals may be assigned to a job in lieu of enrollment and participation in rehabilitative programs without the individual’s consent. (Cal. Code Regs., tit. 15, § 3040, subd. (g).)

Standard CDCR jobs, including clerks, porters, dining work, yard workers, and plant operations, do not have minimum requirements, such as a high school diploma or GED certificate. Some incarcerated individuals are eligible to apply for PIA jobs which have specific requirements that an individual must meet in order to qualify for the job. PIA jobs are higher paying than standard jobs, and incarcerated individuals receive industry-accredited certifications, credits, and training that can be applied upon release for jobs such as meat cutting, coffee roasting, optical, dental, and health care facilities maintenance.

Wages

Beginning on April 16, 2024, CDCR increased wages for all incarcerated workers. The wage increase is expected to result in an increase in the number of half-time versus full-time jobs. In fact, CDCR expects that up to 75 percent of assignments will be half-time. Wages were increased to a maximum of \$0.74 per hour. (Cal. Code Regs., tit. 15, § 3041.2, subd. (a)(1).) Current pay rates for most jobs are as follows:

Skill Level	Hourly (Min/Max)
Level 1 (Lead Person)	\$0.64-\$0.74
Level 2 (Special Skill)	\$0.38-\$0.64
Level 3 (Technician)	\$0.30-\$0.48
Level 4 (Semi-Skilled)	\$0.22-\$0.36
Level 5 (Laborer)	\$0.16-\$0.26

As mentioned above, PIA jobs pay a higher wage than standard jobs with the lowest paid scale ranging from \$0.35-\$0.45 per hour and the highest scale ranging from \$0.80 to \$1 per hour. (Cal. Code Regs., tit. 15, § 8006, subd. (d)(1).) Additionally, incarcerated individuals housed at one of the state’s conservation or fire camps are subject to a different pay scale with a pay rate of \$5.80 to \$10.24 per day based on skill level and position.

4. Bereavement Leave in California

The federal Fair Labor Standards Act does not require that wages be paid to an employee for time not worked, including time off for personal leave, sick leave, vacation, holidays, jury duty, and bereavement. Instead, the matter of paid leave is generally left up to individual employers, although efforts to establish specific types of paid leave for workers in California have been successful in recent years. Access to bereavement leave in the state was expanded in 2022 through the passage of AB 1949 (Low), Chapter 767, Statutes of 2022, which required private sector employers with five or more employees and public sector employers to provide employees with at least 30 days of service up to five unpaid days of bereavement leave upon the death of a family member. Currently, state law pertaining to bereavement leave do not apply to the incarcerated population.

5. Effect of This Bill

This bill allows a person incarcerated in a state prison and who has a job or is enrolled in an educational program to request bereavement leave from the warden of the prison after the death of an immediate family member. This bill requires an incarcerated person requesting bereavement leave to provide substantiation to support the request, and specifies that bereavement leave is limited to three days. The warden is required to grant the requested bereavement leave unless the incarcerated person is employed in a position requiring emergency response, and there is an exigent circumstance requiring the person’s employment during the period requested by the incarcerated person. In the event of an exigent circumstance that prevents the bereavement leave from being granted, bereavement leave must be granted as soon as practicable after the exigent circumstance has ended. This bill additionally requires incarcerated individuals to be given access to a mental health professional during the bereavement period to the extent possible.

This bill defines “immediate family” as “any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who, within six months before the commission of the crime for which the person was convicted to state prison, regularly resided in the household.” This definition is much broader than the one found in Government Code section 12945.7 which defines “family member” as “a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law” for purposes of bereavement leave. (Gov. Code, § 12945.7, subd. (a)(3).)

6. Argument in Support

The California Public Defenders Association writes:

AB 2624 recognizes the right of incarcerated people to grieve and receive mental health support. This investment, aimed at fostering emotional well-being, will yield long-term cost savings by reducing recidivism rates.

AB 2624 seeks to add Section 2710 to the Penal Code, promoting dignity in periods of mourning and allowing incarcerated individuals to access mental health counseling when resources permit. ... The lack of this provision in current law denies compassion in undeniably devastating times, which is inconsistent with our investments in effective rehabilitation.

AB 2624 recognizes the importance of a mourning period upon the death of an immediate family member, ensuring that their humanity is respected, and mental health prioritized.

-- END --