

RESOLUTION 13-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Labor Code section 230.9, to read as follows:

1 § 230.9

2 (a) An employer must provide to California employees a minimum of twenty-four hours
3 of paid time off if the employee is selected to serve on a trial by jury or required to appear for
4 jury selection for more than one day, as required by state law in California.

5 (b) Paid time off under this section need only be provided when an employee receives a
6 California state juror summons and is required to serve on a trial by jury or appear for jury
7 selection for more than one day. Paid time off under this section is not intended to be
8 automatically provided to employees on an annual, regular, or accrual basis and is not intended
9 to compensate employees during any period they are “on call” for jury service and not required
10 to report to court.

11 (c) This section applies to employers with one hundred or more employees in California.

12 (d) The amount of pay to be provided under this section is the same base wage as the
13 employee normally earns during regular work hours.

14 (e) Paid time off under this section need only be provided during an employee’s regularly
15 scheduled work time. If the employee does not have a regular schedule, then the employer must
16 provide paid time off under this section.

17 (f) Paid time off under this section need not be provided more than once a year.

18 (g) Paid time off under this section shall commence upon the employee’s first day of
19 selection to serve on a trial by jury or the second day that the employee is required to appear for
20 jury selection.

21 (h) This section applies to full-time employees, part-time employees, hourly employees,
22 and salaried employees. It does not apply to seasonal employees, temporary employees, or paid
23 interns.

24 (i) If an employee is selected to serve on a trial by jury or required to appear for jury
25 selection under this section and completes jury service in less than twenty-four hours, then an
26 employer satisfies its obligations under this section and need only provide paid time off for the
27 number of hours the employee actually served on a trial by jury or appeared for jury selection.

28 (j) An employer satisfies its obligations under this section by providing twenty-four hours
29 of paid time off under this section.

30 (k) As for timing of pay, an employer must pay an employee for time off under this
31 section as it normally would as if the employee was performing work for the employer during the
32 time the employee served jury duty.

33 (l) Paid time off under this section is not distinguishable from an employee’s regular
34 wages and is subject to tax withholding at the employee’s normal rate.

35 (m) This section is not intended to be used to require an employee to serve on a jury if
36 that employee otherwise qualifies for an exception.

37 (n) This section is not intended to prevent a court from exercising its discretion to excuse
38 a juror on grounds of financial, or other, hardship.

39 (o) Under this section, an employer is permitted to request documentation from the
40 employee verifying proof of jury service, including dates and times of service.
41 (p) Hours spent by employees under this section serving jury duty are not considered
42 hours worked for purposes of California wage and hour laws.
43 (q) Under this section, employers may, but are not required to, track the amount of paid
44 time off used and any balance remaining on an employee's wage statement.
45 (r) Employers must keep records of paid time off under this section provided to
46 employees and the amount of paid time off used by employees for at least three years.
47 (s) Employers under this section must adopt and distribute a written policy informing
48 employees of paid time off for jury service under this section.
49 (t) Employers may not satisfy their obligations under this section by requiring employees
50 to use their vacation time, sick time, their own wages, or other paid time off for jury service.
51 (u) If an employer fails to provide an employee paid time off under this section, the
52 employee may file a complaint with the Division of Labor Standards Enforcement of the
53 Department of Industrial Relations within three years from the date of occurrence of the
54 violation.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): Existing law does not require employers to pay employees for any lost wages due to jury duty. Employees have the option of using vacation hours, paid time off, sick leave, or other personal time and wages to participate in jury duty. However, many potential jurors, particularly lower wage employees, cannot afford to take unpaid time off for jury duty nor can they afford to use their own wages to do so. This leads to a disproportionate number of lower wage employees unable to serve on juries, which hinders their constitutional right to have an equal opportunity to be considered for jury duty, as well as the parties' right to have a jury made up of a representative cross-section of the relevant population. Many companies have recently made public their stance against racial injustice and discrimination, acknowledging the reality of a lack of justice for racially and other diverse populations, and rising to a call to action to implement change and progress towards racial justice. If employers provided paid jury duty to employees, they would be part of the change and progress towards racial justice in our legal system.

The Solution: By adding a requirement that employers compensate employees for jury service, this resolution will decrease the number of prospective jurors that cite loss of pay as a legitimate reason for not serving on a jury, ensuring that a more diverse population of prospective jurors are actually available to serve on juries when called, which will enhance our system of justice.

IMPACT STATEMENT

This resolution may require additional statutory changes. Code of Civil Procedure, section 215, provides that a fifteen dollar a day juror fee shall be provided for each day's attendance as a juror after the first day, except for jurors employed by federal, state, or local government entities, or

by any other public entity as defined in section 481.200, who receives regular compensation and benefits while performing jury service. If Labor Code section 230.9 becomes effective, Code of Civil Procedure section 215(b), would also need to be amended to exclude employees receiving paid time off for jury service under Labor Code section 230.9. Also, Labor Code section 2699.5 will need to be amended to include a reference to Labor Code section 230.9.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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