Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON INSURANCE
Tom Daly, Chair
AB 196 (Gonzalez) – As Amended March 26, 2019

SUBJECT: Paid family leave

SUMMARY: Increases the wage replacement rate for paid family leave (PFL) claims to 100% of worker's highest quarterly earnings in the past 18 months.

EXISTING LAW:

1) Establishes the PFL program which provides up to six weeks of partial wage replacement benefits to workers who must take time off work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child.

2) Provides 70% wage replacement for a claimant with income below 33% of the statewide average wage level.

3) Provides 60% wage replacement for a claimant with income at or above 33% of the statewide average wage level.

4) Limits the amount of PFL payments to the maximum payment for workers compensation temporary disability (currently $1,252 per week).

5) Adjusts the maximum payment for workers compensation disability annually by a formula tied to the statewide average weekly wage.

6) Specifies that an individual is not eligible for PFL if another family member, is ready, willing, and able and available for the same period of time that the individual is providing the required care.

FISCAL EFFECT: Undetermined

COMMENTS:

1) *Purpose.* According to the author, AB 196 expands PFL program benefits to help ensure financial security for many working families who cannot afford to take unpaid or partially-paid leave. This bill would ensure paid family leave is a benefit that all eligible workers can enjoy by guaranteeing one hundred percent wage replacement up to the PFL program's maximum weekly benefit amount. This would better enable all workers and their families to meet their health and family needs without sacrificing their economic security.

   Paid family leave is a hallmark workplace protection, but one that still isn't reasonably accessible for many low- and middle-income workers through California's employee-funded PFL program. Data from the Center for Economic and Policy Research indicates that low-wage workers cannot make use of the PFL program in California when the need arises because a partially-paid leave "on minimum wage isn't enough to live on". In 2018, workers making less than $20,000 per year only made up 24 percent of overall PFL claims – down from 27 percent in 2017. This is despite the fact that they make up nearly 40 percent of the overall population of workers contributing to the program, according to recent data from the Employment Development Department (EDD).

Of workers surveyed in California, almost a third claimed they did not make use of the PFL program due to the limited wage replacement. Working mothers are disproportionately harmed by the gap in our state's PFL program. This is evident by the fact that one in four mothers feel that they have no choice but to return to their jobs within a mere two weeks of giving birth to make ends meet. However, opting out of the labor force without a guarantee of 100% income replacement is not an option for most Latina, Native American and Black single mothers when they are facing the pressures of being the family's sole provider. Moreover, single mothers of color working low-wage jobs have the highest need for 100% income replacement because they are also frequently the primary caregiver for their loved ones.

2) *Paid Family Leave History***.** PFL was enacted in 2002 as an expansion to the State Disability Insurance (SDI) program to extend disability compensation to individuals who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new minor child. California was the first state in the nation to implement a paid family leave benefit, with benefit payments beginning on July 1, 2004. In 2018, 203,732 PFL claims were filed approximately 90% of which were filed to take time off to bond with a newborn child.

Many confuse the PFL program (which provides only wage replacement during leave) with the job protection guarantees in the federal Family & Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). However, the changes to PFL benefits in this bill do not affect these job protection laws. The last major changes to the PFL program were made by AB 908 (Gomez) in 2016. That bill increased the wage replacement rate across the board, and provided for a higher wage replacement rate for low-income workers. These changes first took effect in 2018 and there has not been sufficient experience to evaluate whether increased wage replacement at that scale has changed who applies for PFL benefits.

3) *Current PFL Benefits***.** The PFL program provides a cash benefit set at 60% of "base period" wages for up to 6 weeks for those above poverty level income and 70% for those with below poverty level income. The maximum weekly benefit was $1,216 in 2018 and is adjusted every year based on the statewide average weekly wage. The average claim in 2018 paid $661 per week for 5.5 weeks. National data show that two-thirds of women were working during their last pregnancy and that 70% of women took maternity leave with an average duration of 10 weeks.

The SDI program provides partial wage replacement benefits to employees who are unable to work because of pregnancy or illnesses and injuries unrelated to their job (job related injuries are covered by the workers' compensation system). To be eligible for SDI, a worker's disability must be certified by a health care professional. Workers receive 55% of their wages, subject to a maximum benefit amount (currently $1,104 per week) for up to 52 weeks.

4) *Funding PFL and SDI.* The PFL program is part of the SDI program that is funded by the proceeds of an employee payroll deduction which are deposited in the Disability Insurance (DI) Fund. The SDI contribution is set at 1% of the first $114,967 of wages in 2018. Both the rate (capped at 1.5%) and the wage ceiling are adjusted by EDD according to

a statutory formula every year. At the end of 2018, the DI fund was projected to have reserves ($3.3 billion) that are over 46% of annual program costs. EDD guidelines suggest that a reserve of 25% is adequate to ensure the ongoing solvency of the DI Fund. PFL claims have historically been between 10-15% of the total payments from the DI Fund.

5) *Costs*. EDD's estimates indicate that this bill would result in additional PFL benefits paid of approximately $350 million in the first year. The net benefits paid would increase to $460 million in 2021, $770 million in 2022, $810 million in 2023, and $850 million in 2024. This increase in net benefits paid would result in a 0.1 percent increase in the contribution rate in 2021, 2022, and 2024. EDD estimates this would result in a maximum additional yearly contribution of $132 per worker in 2021, $138 per worker in 2022, and $150 per worker in 2024. This estimate does not assume an increase in claim filing rates, which may occur given the higher benefits offered by the bill.

6) *Previous Legislation*.

SB 1123 (Jackson) Chapter 849, Statutes of 2018 expanded the paid family leave program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces. The bill will take effect on January 1, 2021.

SB 63 (Jackson) Chapter 686, Statues of 2017 prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child.

AB 908 (Gomez) Chapter 5, Statutes of 2016 increased the State Disability Insurance (SDI) wage replacement rate from 55 percent to 60 for middle and high-income workers and 70 percent for low-income workers. The bill also eliminated the waiting period for paid family leave benefits.

SB 770 (Jackson), Chapter 350, Statutes of 2013 expanded the definition of family to include in-laws, siblings and grandparents.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP California
California Asset Building Coalition
California Food Policy Advocates (CFPA)
California Legislative Women's Caucus
California WIC Association
End Child Poverty of CA
Friends Committee on Legislation o California (FCLCA)
GRACE Institute
Human Impact Partners
Mia Familia Vota

National Association of Social Workers, California Chapter (NASW-CA)
Service Employees International Union (SEIU California)

Opposition

United Chamber Advocacy Network (UCAN)

Analysis Prepared by: Paul Riches / INS. / (916) 319-2086