
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

Bill No: AB 2017 **Hearing Date:** August 5, 2020
Author: Mullin
Version: March 12, 2020
Urgency: No **Fiscal:** Yes
Consultant: Alma Perez-Schwab

SUBJECT: Employee: sick leave: kin care.

KEY ISSUE

Should it be an employee's decision to designate any sick leave used for the care of their family member or for attaining relief for domestic violence victims as leave taken under "kin care" provisions rather than the employee's personal sick leave entitlement?

ANALYSIS

Existing law:

- 1) Requires an employer who provides sick leave for its workers to permit an employee to use any of their accrued and available sick leave entitlement for the following reasons (commonly referred to as "Kin Care" law):
 - a. Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - b. For an employee who is a victim of domestic violence, sexual assault, or stalking. (Labor Code §233 & §246.5)
- 2) Provides that sick leave available for these purposes shall not be less than the sick leave that would be accrued during six months at the employee's rate of entitlement at that time. (Labor Code §233)
- 3) Defines "employer" as any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities. (Labor Code §233)
- 4) Defines "family member" as a child, as defined, parent or guardian, as defined, spouse or registered domestic partner, grandchild, grandparent, and sibling. (Labor Code §233 & §245.5)
- 5) Prohibits an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use sick leave for these purposes. [Labor Code §233(c)]
- 6) Specifies that any employee aggrieved by a violation of these provisions is entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief. [Labor Code §233(d)]

This bill:

- 1) Specifies that it is at the employee's discretion to designate sick leave for the purpose of diagnosis, care, or treatment of their or their family member's health condition or for obtaining relief if the employee is a victim of domestic violence, sexual assault, or stalking.

COMMENTS**1. Need for this bill?**

According to the author, "Current law explicitly requires employers to allow a minimum of 50% of an employee's accrued sick leave to be used for purposes of kin care –job-protected time off to care for a family member. Thus, employees now have the ability to use accrued sick days for themselves or for taking care of a family member. Currently there are cases where employers are designating which type of leave an employee is using when they call in sick without the employee's consent. Employees have been denied the choice of crediting against their own sick leave, in order to bank time to take care of their family members. If employees have used all of their available kin care days without their knowledge - they don't have paid sick days to take off for their sick children or parents, and get marked with an absence and some cases no-pay, and disciplined.

AB 2017 clarifies that an employee may designate what type of leave they are using when they use an accrued sick day – personal or kin care. This designation is up to the employee not the employer, which is the spirit of the existing law but needs clarification. AB 2017 will not require employers to provide any additional paid time off, it simply clarifies who designates which type of sick leave is used when an employee uses a sick day."

2. Proponent Arguments:

The California Teamsters Public Affairs Council is in support and writes, "Currently, employers are required to allow employees to take half of their accrued sick leave to care for a sick family member. This is commonly referred to as "kin" care. The purpose of this provision in law is an acknowledgement that workers are often responsible for the care of other family members, including their children, and when those family members are sick a worker needs time off to do what it takes to provide that necessary care. This policy is obviously the right thing to do for working families, but also makes good business sense. Study after study shows that when workers are provided with adequate paid sick leave and paid leave to care for sick family members, they are more productive at work and have better health outcomes for themselves and their family members.

Unfortunately, some employers have taken it upon themselves to thwart the law and its intent. We have seen employers designate personal sick leave as kin care even though the employee clearly took it because they themselves were sick. The result is when a family member is sick, there is either not enough or zero kin care days left when needed. This bill will put an end to this practice by ensuring that the employee has the right to designate what kind of sick leave they are taking."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 579 (Jackson, Chapter 802, Statutes of 2015): prohibited an employer from denying an employee the right to use sick leave or taking specific discriminatory action against an employee for using, or attempting to exercise the right to use, sick leave for kin care purposes.

AB 1522 (Gonzalez, Chapter 317, Statutes of 2014): established the Healthy Workplaces, Healthy Families Act that provided, among other things, that an employee could use sick leave for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee's family member.

SUPPORT

California Catholic Conference
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California School Employees Association, AFL-CIO
California Teamsters Public Affairs Council
Communications Workers of America, District 9 (CWA)
Inlandboatmen's Union of the Pacific
International Association of Machinists & Aerospace Workers, Air Transport Employees
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
UNITE-HERE, AFL-CIO
United Public Employees (UPE)
Utility Workers of America

OPPOSITION

None received

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