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# SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	SB 1383	<b>Hearing Date:</b>	May 14, 2020
<b>Author:</b>	Jackson		
<b>Version:</b>	March 25, 2020		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Alma Perez-Schwab		

**SUBJECT:** Employees: time off.

## KEY ISSUES

Should the Legislature amend existing provisions regarding protected child-related activities for which an employee can take time off from work to include time off to attend to an emergency school closure pursuant to a state of emergency declaration by federal, state, or local government agency?

Should these protections be available to employees working for employers of all sizes?

## ANALYSIS

### Existing law:

- 1) Under the Family School Partnership Act, prohibits an employer who employs 25 or more employees working at the same location from discharging or in any way discriminating against an employee who is a parent of one or more children aged to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider, for taking off up to 40 hours each year, for the purpose of either of the following:
  - a. To find, enroll, or reenroll their child in a school or licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence. Time off shall not exceed eight hours in any calendar month of the year.
  - b. To address a childcare provider or school emergency, if the employee gives notice to the employer.  
[Labor Code §230.8(a)(1)]
- 2) Specifies that if more than one parent of a child is employed by the same employer at the same worksite, the entitlement of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously for that same child only if he or she obtains the employer's approval for the requested time off. [Labor Code §230.8(a)(2)]
- 3) Requires the employee to utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this section, unless otherwise provided by a collective bargaining agreement, as specified. An employee also may

utilize time off without pay for this purpose, to the extent made available by his or her employer. [Labor Code §230.8(b)(1)]

- 4) The employee, if requested by the employer, shall provide documentation from the school or licensed childcare provider as proof that he or she engaged in child-related activities permitted on a specific date and at a particular time. [Labor Code §230.8(c)]
- 5) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in terms and conditions of employment for taking this time off to engage in child-related activities permitted under this Act shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. An employer who willfully refuses to rehire, promote, or otherwise restore an employee determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits. [Labor Code §230.8(d)]
- 6) For purposes of this act, defines the following:
  - a. "Parent" means a parent, guardian, stepparent, foster parent, grandparent of, or a person who stands in loco parentis to, a child.
  - b. "Child care provider or school emergency" means that an employee's child cannot remain in a school or with a child care provider due to:
    - i. The school or childcare provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or childcare provider.
    - ii. Behavioral or discipline problems.
    - iii. Closure or unexpected unavailability of the school or childcare provider, excluding planned holidays.
    - iv. A natural disaster, including, but not limited to, fire, earthquake, or flood.

**This bill:**

- 1) Removes the employee size threshold (25 or more employees) to apply the Family School Partnership Act to all employers.
- 2) Additionally authorizes an employee to take time off work to attend to an emergency school closure pursuant to a state of emergency declaration by federal, state, or local government agency if the employee gives notice to the employer.
- 3) Specifies that time off taken for a childcare provider or school emergency (including a school closure) shall not be limited to 40 hours and may be extended to the duration of the emergency.

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

According to the author of the measure, “The COVID-19 pandemic has shed light on the critical need for parents to be able to take job-protected time off to care for their children during an emergency. In response to COVID-19, 99.6 percent of California’s K-12 school districts have closed, affecting 6.2 million students and their families.<sup>1</sup> In addition, during the 2018-19 school year more than 1.2 million students were impacted by emergency school closures due to natural disasters such as wildfires.<sup>2</sup> Most children live in households where their parent(s) work, and one-fourth of children under the age of 18 live with a single parent.<sup>3</sup> Yet, many parents risk losing their jobs when they face a childcare or school emergency.

When natural disasters such as wildfires or pandemics strike and care facilities close, children continue to need care; their parents should not be punished for refusing to leave them at home alone. The COVID-19 crisis has closed many schools and day care facilities, forcing parents across the state to risk losing their jobs in order to stay at home and provide their children with necessary care. A parent’s need to care for a child during an emergency is not limited to 40 hours, but currently, their access to job protection is.”

The author argues that this bill will help support families that are negatively impacted by COVID-19, wildfires, and other crises by amending the Family School Partnership Act to 1) allow all employees to take job-protected, unpaid time off for specified school or child-related activities; 2) clarify that school closure pursuant to a state of emergency declaration by federal, state or local government agency qualifies as an emergency; and 3) extends the available time off to the duration of the declared emergency.

**2. Proponent Arguments:**

According to the bill’s sponsor, Legal Aid at Work, “California’s Family School Partnership Act currently allows parents working for employers with 25 or more employees to take leave for up to 40 hours per calendar year to provide care for their child in an emergency. However, the recent fires, and now, the COVID-19 pandemic, have made it clear how inadequate these protections are. The COVID-19 pandemic has shed light on the critical need for parents to be able to take job-protected time off to care for their children.

When schools and daycares close, children still need care, and that responsibility falls to the parents, whether or not they are employed. This childcare crisis is further exacerbated in the COVID-19 pandemic, because alternative care options, back-up day care centers, family members, or friends, are simply not available, due to shelter-in-place orders, and requirements that individuals who are not living together remain 6 feet apart. Legal Aid at Work has received calls from numerous parents who have had no choice but to leave their jobs, no matter the consequence, because they simply cannot leave their child alone at home.

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<sup>1</sup> <https://edsource.org/2020/nearly-all-california-districts-are-closed-to-avoid-spread-of-coronavirus-while-few-rural-districts-remain-open/626397>

<sup>2</sup> <https://www.ppic.org/blog/how-covid-19-closures-may-disrupt-student-learning/>

<sup>3</sup> <https://www.pewresearch.org/fact-tank/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/>

Frontline workers, including those working in childcare, healthcare, and the grocery industry, disproportionately women, cannot work from home and are hit especially hard by childcare obligations in this crisis. California recognized the challenges faced by working parents when it passed the Family School Partnership Act, and now it's time to recognize the unique needs families are facing during a crisis like the current COVID-19 pandemic."

SB 1383 addresses these needs by expanding the Family School Partnership to ensure all parents, regardless of their employer's size, are able to care for their children during an emergency for the duration of that emergency.

### 3. Opponent Arguments:

A coalition of employers in opposition write, "We are certainly sympathetic to the plight of many working parents who are experiencing tremendous challenges related to the closures of schools and child care centers, including as a result of the COVID-19 crisis or other similar recent crises (such as wildfires). However, SB 1383 dramatically expands Labor Code section 230.8 permanently well beyond these issues."

They continue, "SB 1383 proposes to permanently expand Labor Code section 230.8 to apply to employers of any size. This language is not limited to the current COVID-19 crisis, nor is it limited to the need to take time off work for school or child care issues related to the COVID-19 crisis. Instead, SB 1383 seeks to permanently expand the law to apply to employers of all sizes for any of the reasons under Labor Code section 230.8. This will burden small employers well beyond the impact of the current Labor Code provision, and will do so permanently."

Furthermore, they argue that, "more significantly, SB 1383 provides that any leave taken to address a "child care provider or school emergency" shall not be limited to 40 hours and may be extended to the duration of the emergency. This is not limited to emergencies for the new category of a state of emergency declaration by a federal, state, or local government agency. This includes all of the reasons listed above in existing Labor Code section 230.8 for a child care provider or school emergency. For example, there would no longer be a limit of 40 hours for time off to attend to a "behavioral or disciplinary problem." The employee would be able to take leave for the "duration of the emergency," which in this context would be difficult to define. When does a "behavioral" or "disciplinary" emergency end? As a result, there would be almost no limit to the amount of time off an employer would be required to provide."

In conclusion, they argue, "Therefore, SB 1383 makes sweeping and permanent changes to Labor Code section 230.8 that will apply beyond the context of any crisis related to COVID-19, or even recent wildfire issues. There may be a time and a place to have a conversation about extending this provision of law to smaller employers, or increasing the 40 hours requirement. However, that policy discussion should not be had under the cover of purporting to provide relief to employees during the current crisis. Finally, it should also be noted that the federal Families First Coronavirus Response Act (FFCRA) requires covered employers to provide paid leave to employees for a number of COVID-19 reasons, including school or child care closures."

**4. Related Legislation:**

**SB 943 (Chang, 2020):** Authorizes the use of Paid Family Leave benefits, until June 1, 2021, for individuals who need to take time off work to care for a minor child whose school has been closed due to the COVID-19 virus outbreak or is caring for a special needs child or adult, or both, due to the outbreak. SB 943 is pending hearing before this Committee.

**AB 3216 (Kalra, 2020):** Would make it an unlawful employment practice for any employer to refuse to grant a request by any employee to take family care and medical leave due to the coronavirus (COVID-19) with a guarantee of employment in the same or comparable position upon the termination of the leave. AB 3216 is pending in the Assembly Labor and Employment Committee.

**SUPPORT**

Legal Aid at Work (Sponsor)

American Civil Liberties Union of California

BreastfeedLA

California Employment Lawyers Association

California Pan - Ethnic Health Network

California Partnership to End Domestic Violence

California Teachers Association

California Women's Law Center

California Work & Family Coalition

California Labor Federation, AFL-CIO

Child Care Law Center

Consumer Attorneys of California

Equal Rights Advocates

Family Caregiver Alliance

First 5 California

Friends Committee on Legislation of California

Jewish Center for Justice

Lutheran Office of Public Policy – California

Mi Familia Vota

Restaurant Opportunities Center United

Roots of Change

Stronger California Advocates Network

USC Center for the Changing Family

Work Equity Action Fund

Working Partnerships USA

**OPPOSITION**

Auto Care Association

California Association of Joint Powers Authorities (CAJPA)

California Attractions and Parks Association

California Building Industry Association

California Chamber of Commerce

California Farm Bureau Federation  
California Food Producers  
California Grocers Association  
California Hospital Association  
California Hotel & Lodging Association  
California Restaurant Association  
California Retailers Association  
Cawa - Representing the Automotive Parts Industry  
Chamber of Commerce Alliance of Ventura and Santa Barbara Counties  
Csac Excess Insurance Authority  
Flasher Barricade Association  
League of California Cities  
National Federation of Independent Business (NFIB)  
Society for Human Resource Management  
Western Growers Association  
Western Manufactured Housing Communities Association

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