
THIRD READING

Bill No: SB 1383
Author: Jackson (D)
Amended: 6/18/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-0, 5/14/20
AYES: Hill, Jackson, Mitchell
NO VOTE RECORDED: Morrell, Pan

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Employees: time off

SOURCE: Legal Aid at Work

DIGEST: This bill amends the existing Family School Partnership Act (applicable to employers of 25 or more employees) on protected child-related activities for which an employee can take time off from work to include time off to attend to an emergency school or childcare provider closure or unavailability. Additionally, for a school or childcare provider closure or unavailability due to a state of emergency declared by a federal, state, or local government agency, the bill specifies that: (1) no employer, regardless of the number of employees, shall discharge or in any way discriminate against an employee for taking time off; and (2) time off taken shall not be limited to 40 hours and may be extended to the duration of the school or childcare provider closure or unavailability.

ANALYSIS:

Existing law:

- 1) Prohibits, under the Family School Partnership Act (Act), 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: [Labor Code §230.8(a)(1)]

- 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.
- 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) Requires the employee, if requested by the employer, 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) Provides, 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) Defines the following, for purposes of the Act:

- 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 requirement that the childcare provider must be licensed.
- 2) Authorizes an employee to take time off work to attend to an emergency school or childcare provider closure or unavailability, if the employee gives notice to the employer.
- 3) Prohibits an employer, regardless of the number of employees it employs, from discharging or in any way discriminating against an employee who is a parent of one or more children, as specified, for taking time off from work to address a school or childcare provider closure or unavailability due to a state of emergency declared by a federal, state or local government agency.
- 4) Specifies that time off taken pursuant to the state of emergency shall not be limited to 40 hours and may be extended to the duration of the school or childcare provider closure or unavailability.
- 5) Specifies that leave taken pursuant to the Act shall run concurrently with any other leave entitlement for which the employee’s absence simultaneously qualifies.

- 6) Defines “school or childcare provider,” as a physical location in which care is provided for the employee’s child or someone who cares for the employee’s child. Such a physical location does not have to be solely dedicated to such care, and includes daycare facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs. Someone who cares for the child includes individuals paid to provide childcare, including nannies, au pairs, and babysitters, as well as individuals who provide childcare at no cost and without license on a regular basis, for example, a grandparent, an aunt, an uncle, or a neighbor.

Background

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. 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. 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. 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.”

Related/Prior Legislation

SB 943 (Chang, 2020) authorizes the use of Paid Family Leave benefits, until December 31, 2020, 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 due to the outbreak. SB 943 was held under submission in Senate Appropriations Committee.

AB 3216 (Katra, 2020) makes 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 referral in Senate Rules Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Department of Industrial Relations (DIR) indicates that, minimally, it would incur first year costs of \$198,000, and \$186,000 annually thereafter, to implement the provisions of the bill (special fund).

SUPPORT: (Verified 6/18/20)

Legal Aid at Work (source)

ACCESS Women's Health Justice

American Civil Liberties Union of California

BreastfeedLA

California Conference Board of the Amalgamated Transit Union

California Conference of Machinists

California Employment Lawyers Association

California Labor Federation, AFL-CIO

California Latinas for Reproductive Justice

California Pan - Ethnic Health Network

California Partnership to End Domestic Violence

California State PTA

California Teachers Association

California Teamsters Public Affairs Council

California Women's Law Center

California Work & Family Coalition

Child Care Law Center

Communications Workers of America, District 9

Consumer Attorneys of California

Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO

Equal Rights Advocates

Family Caregiver Alliance

First 5 California

Friends Committee on Legislation of California

Hollywood Chapter of the National Organization for Women

Inlandboatmen's Union of the Pacific

Jewish Center for Justice
Lutheran Office of Public Policy – California
Mi Familia Vota
National Association of Social Workers, California Chapter
National Women’s Political Caucus of California
One Redwood City
Pacifica Housing 4 All
Partnership for Working Families
Peace and Freedom Party of California
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
Public Counsel
Restaurant Opportunities Center United
Roots of Change
SEIU California
Stronger California Advocates Network
Transport Workers Union of America, AFL-CIO
UNITE-HERE, AFL-CIO
USC Center for the Changing Family
Utility Workers of America
Work Equity Action Fund
Working Partnerships USA

OPPOSITION: (Verified 6/19/20)

Auto Care Association
California Association of Joint Powers Authorities
California Attractions and Parks Association
California Bankers 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 Landscape Contractors Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management
CAWA - Representing the Automotive Parts Industry
Chamber of Commerce Alliance of Ventura and Santa Barbara Counties

Construction Employers Association
CSAC - Excess Insurance Authority
Flasher Barricade Association
League of California Cities
National Federation of Independent Business
Western Growers Association
Western Manufactured Housing Communities Association

ARGUMENTS IN SUPPORT: According to the bill's sponsor, Legal Aid at Work, "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.

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."

ARGUMENTS IN OPPOSITION: 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). We have had very positive conversations with the author and appreciate the amendments she has taken to narrow certain provisions of the bill in an effort to address our concerns. However, we remain concerned about the potential unlimited scope of the new entitlement for time off under the bill, which would apply to employers of all sizes. Therefore, we respectfully request the author consider the following two further amendments to minimize the burden on California employers:

- 1) The bill should provide some limit to the amount of time an employee may take for school and childcare related leave due to a state of emergency...Due to the uncertain nature of future, unforeseen "states of emergency" and the potential that a school or childcare provider may be closed or unavailable for a

significant period of time, we believe it would be reasonable to provide some upper limit to this protected time off. Otherwise, an employer (even a very small employer) may be obligated to provide unlimited time off.

- 2) The bill should be amended to obligate the employer to provide the time off only where the employee is unable to work or “telework” due to the school or childcare closure or unavailability. Even during the current COVID-19 crisis, many employees have been able to shift to remote work or “telework,” and employers have worked collaboratively with their employees to allow them to remain employed and earning income in the midst of widespread shutdown orders impacting most businesses. This flexibility should be acknowledged and encouraged.”

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
6/23/20 17:14:05

**** **END** ****