

Date of Hearing: July 29, 2020

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

SB 1383 (Jackson) – As Amended June 29, 2020

SENATE VOTE: 21-12

SUBJECT: Unlawful employment practice: family leave

SUMMARY: Expands the California Family Rights Act (CFRA) to allow employees to use unpaid job protected leave to care for a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition. Specifically, **this bill:**

- 1) Expands CFRA to cover domestic partners, grandparents, grandchildren, siblings, and parents-in-law.
- 2) Expands the definition of a “child” to include a child of a domestic partner.
- 3) Provides that the term “domestic partner” shall have the same meaning as defined in Section 297 of the Family Code.
- 4) Defines “employer” as any person who directly employs five or more persons to perform services for a wage or salary or the state, and any political or civil subdivision of the state and cities.
- 5) Defines “grandchild” as a child of the employee’s child.
- 6) Defines “grandparent” as a parent of the employee’s parent.
- 7) Defines “parent-in-law” as the parent of a spouse or domestic partner.
- 8) Defines “sibling” as a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
- 9) Expands “family care and medical leave” to include:
 - a) Leave to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition.
 - b) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Section 3302.2 of the Unemployment Insurance Code.
- 10) Repeals the provisions of the New Parent Leave Act.

EXISTING LAW:**The California Paid Family Leave Program (PFL)**

Provides up to eight weeks of partial wage replacement benefits for workers who take time off to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner, or to bond with a minor child.

The California Family Rights Act (CFRA)

- 1) Applies to employees with more than 12 months of service with the employer and who have at least 1,250 hours of service with the employer during the previous 12 months.
- 2) Applies to employers who employ 50 or more employees within 75 miles of the worksite where the employee is employed.
- 3) Provides that it is an unlawful employment practice for an employer to refuse to grant an eligible employee to take up to 12 workweeks of family care and medical leave.
- 4) Provides that after a period of leave under CFRA, an employee is guaranteed employment in the same or comparable position.
- 5) Defines “employment in the same or comparable position” as employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.
- 6) Defines “family care and medical leave” as any of the following:
 - a) Leave for reason of the birth of a child of the employee, the place of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.
 - b) Leave to care for a parent or a spouse who has a serious health condition.
 - c) Leave because of an employee’s own serious health condition that makes the employee unable to perform the functions of the position.
- 7) Defines “parent” as a biological, foster, or adoptive parent, a stepparent, a legal guardian or other person who stood in loco parentis to the employee when the employee was a child.
- 8) Defines “serious health condition” as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential health care facility or continuing treatment or continuing supervision by a health care provider.
- 9) Provides that an employer shall not be required to pay for any leave taken under CFRA except that the employee may elect, or the employer may require, the employee to substitute for leave under CFRA any of the employee's accrued vacation leave, sick leave, or other accrued time off during this period.

- 10) Requires an employer to maintain and pay for health coverage of an employee for the duration of the leave under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.
- 11) Provides that it shall be an unlawful employment practice to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under CFRA.

The New Parent Leave Act

- 1) Applies to employees with more than 12 months of service with the employer and have at least 1,250 hours of service during the previous 12 months and who do not qualify for leave under CFRA and the federal Family and Medical Leave Act of 1993.
- 2) Defines “employer” as:
 - a) A person who employs 20 or more persons to perform services for a wage or salary.
 - b) The state and any political or civil subdivision of the state and cities.
- 3) Provides that it is an unlawful employment practice for an employer to refuse to grant an employee to take up to 12 workweeks of parent leave to bond with a new child within one year of the child’s birth, adoption, or foster care placement.
- 4) Provides that after a period of parental leave, an employee is guaranteed employment in the same or comparable position.
- 5) Provides that it is an unlawful employment practice for an employer to refuse to maintain and pay for health coverage of an employee for the duration of the leave under the conditions that coverage would have been provided if the employee had continued in employment continuously for the duration of the leave.
- 6) Provides that it shall be an unlawful employment practice for an employer to refuse to hire, or to discharge or discriminate against an individual who exercises their right to parental leave or gives testimony or information in an inquiry or proceeding regarding parental leave rights.

FISCAL EFFECT: Unknown

COMMENTS: California’s PFL Program provides benefits to individuals who need time to take off to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner or to bond with a new child. Eligible individuals may receive wage replacement benefits for eight weeks in the amount of approximately 60-70% of their weekly salary. The program is funded by worker contributions via the State Disability Insurance tax. PFL does not include job protections. Thus, for example, an employee who has a seriously ill grandparent may be eligible for PFL to take care of that grandparent but may lose their job if they take PFL because, currently, CFRA, unpaid job protected leave, does not apply to leave to care for a seriously ill grandparent.

A recent study of PFL generated several findings:

- Approximately 90% of all PFL claims are to bond with a new child.
- Employment of new mothers increased following the introduction of PFL.
- Employees from large employers, those employee 250 or more employees, have greater use of PFL than employers employing 25 or fewer employees.
- Employers with 25 or fewer employees had employees use PFL in 6% of all quarters, or roughly once every four years.
- PFL does not appear to increase the prevalence of businesses ceasing operations.
- Small employers experience a reduction in labor costs when workers use PFL. Employers with 25 or fewer employees experience, on average, a 14% decrease in per worker labor costs when workers use PFL.¹

Other studies have shown that leave policies generally result in positive or few negative effects on employers of all sizes.² For example, 75% of businesses with 50 or more employees reported complying with the federal Family Medical and Leave Act (FMLA)³ was “very easy” or “somewhat easy.”⁴ Less than one percent of businesses with fewer than 50 employees (those that comply with FMLA to compete with larger businesses or those that mistakenly believed FMLA applied to them) reported difficulty complying with FMLA.⁵

Access to PFL is associated with improved family health and economic security including, but not limited to, improved maternal physical and mental health,⁶ improved infant health,⁷ and increased opportunities for family caregivers.⁸

In 2019, Governor Newsom signed SB 83 which extended PFL benefits from six to eight weeks, effective July 1, 2020. Governor Newsom also convened a Paid Family Leave Task Force, consisting of members of the business, legal, policy, science, and early learning communities, intended to provide policy recommendations to expand California’s Paid Family Leave Program. This bill is the result of a recommendation of this task force.

¹ Bay Area Council Economic Institute, “Evaluation of the California Paid Family Leave Program” (June 19, 2020) p. 5 <http://www.bayareaeconomy.org/files/pdf/BACEI_PFL_6192020.pdf>.

² *Id.* at p. 10.

³ FMLA is the federal leave program that allows employees who work for employers with 50 or more employees to take unpaid job protected leave for their own serious health condition or the serious health condition of a family member. FMLA and CFRA substantially overlap in terms of scope, and when they do, they run concurrently.

⁴ Helene Jorgensen, Eileen Appelbaum, Center for Economic and Policy Research, “Expanding Family and Medical Leave to Small Firms” (2014) p. 7 <<https://www.cepr.net/documents/fmla-small-firms-2014-04.pdf>>.

⁵ *Id.* at p. 9.

⁶ Pinka Chatterji, Sara Markowitz, National Bureau of Economic Research, “Family Leave After Childbirth and the Health of New Mothers (2008) p. 4 <<http://www.nber.org/papers/w14156>>.

⁷ Maya Rossin, *The Effects of Maternity Leave on Children’s Birth and Infant Health Outcomes in the United States* (March 2011) 30 J. Health Econ. 221-239 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3698961/>>.

⁸ Reinhard, et al., AARP Public Policy Institute, “Valuing the Invaluable: 2019 Update Charting a Path Forward: State Estimates” (2019) p. 8 <<https://www.aarp.org/content/dam/aarp/ppi/2019/11/valuing-the-invaluable-2019-update-charting-a-path-forward.doi.10.26419-2Fppi.00082.001.pdf>>.

According to the author, “[i]n 2004, California implemented the nation’s first Paid Family Leave Program, an entirely worker-funded program paid for through paycheck deductions funnelled through the State Disability Insurance program. But because there was no job protection directly associated with the program, Californians have had to rely on separate and inadequate job protection laws, primarily the California Family Rights Act, to ensure they can take the Paid Family Leave benefits they pay for without risking their economic security and livelihoods while doing so.

These job protection laws have long been inadequate because they exclude millions of Californians because of their employer size. Currently, 40 percent of California workers are at risk of losing their jobs if they take leave to care for a seriously ill loved one or themselves because their employer is too small. This means that employees are risking their economic livelihood at precisely the time they are dealing with the strain of caring for a newborn or a parent with cancer. Once a leader on family leave, California has now fallen behind. Other states, including New York, Massachusetts, Connecticut, Rhode Island and Oregon have enacted paid family leave laws that provide job protection for all workers, regardless of employer size.

Newly enacted federal leave tied to COVID-19 leaves out up to 80% of the workforce and expires at the end of the year, making this bill necessary to ensure California workers affected by the coronavirus can take time to care for themselves or a sick family member and keep their workplaces and communities healthy and safe.”

Arguments in Support

A coalition of over 200 worker advocacy organizations and unions, including the California Work and Family Coalition, the American Civil Liberties Union of California, the California Labor Federation, and SEIU California, argue that “the purpose of California’s wage replacement and job protection laws is to allow families to recover from illnesses and be there for each other during life’s significant moments – when a baby is born, when a parent is dying of cancer, or a spouse suffer a stroke – without having to worry about losing their job, health benefits, or income. Unfortunately, the laws do not align, and many more people are eligible for wage replacement than job protection, which leaves millions of Californians vulnerable to losing their jobs and long-term financial security for taking the leave they need to care for themselves or their families.”

The worker advocacy coalition further asserts “[l]ow-wage workers are disproportionately less likely to be covered, as they are more likely to work for small employers. A 2018 survey conducted by the California Employment Development Department (EDD) determined that a top reason for not using Paid Family Leave was fear of job loss. . . . As a result, workers with low wages are not utilizing the Paid Family Leave Program as frequently as higher wage workers. In 2018, workers who earned less than \$20,000 a year made up over 38% of the state’s workforce, yet they only represent 24% of total claims that same year. Of the 6.8 million workers who earned less than \$20,000 in 2018 and were covered by the PFL program, only 45,672 workers utilized the PFL program. This 0.7% utilization rate is lower than that for other income levels, which all exceeded 2% utilization. . . . [W]orkers should be able to access the SDI and PFL benefits that they pay for out of their own paychecks without having to risk their jobs.”

The worker advocacy coalition also argues “[t]he California Family Rights Act’s narrow definition of family should be consistent with the more inclusive definition in Paid Family

Leave. . . . An inclusive family definition is especially important for the LGBTQ community, people with or caring for those with disabilities, veterans, and for the increasing number of Californians, disproportionately people of color, living in multigenerational households.”

Arguments in Opposition

A coalition of employer organizations, including the California Chamber of Commerce, argue, among other things, that it disproportionately impacts small employers in California with only 5 employees, exposes small employers to costly litigation even for unintentional mistakes, imposes a significant administrative burden, and adds costs to small employers even though it is not paid.

Regarding the impact on small employers with 5 employees, the Chamber asserts “[a]ccording to the most recent labor market data from the Employment Development Department (EDD), out of California’s approximately 1.6 million employers, approximately 173,000 employers in California have between 5-10 employees, and will be limited in their ability to manage this leave.” Quoting a 2011 report on Paid Family Leave, the Chamber emphasizes “[v]ery small businesses like this one [which had three employees] do face special challenges [to cover leaves] since an inevitable effect of their size is that very few co-workers are available to cover the work when someone is absent.”

With regard to the increased exposure to costly litigation, the Chamber argues “[a]n employer with only five employees does not have a dedicated human resources team or in-house counsel to advise them on how to properly administer this leave, document it, track it, obtain medical verifications, eetc. The regulations on implementing the 12 weeks of leave under CFRA are approximately 36 pages long. A small employer is bound to make an unintentional mistake along the way, which will cost them in litigation.”

The Chamber further argues that this bill “adds costs to small employers even though it is not paid. . . . The leave is ‘protected,’ meaning an employer must return the employee to the same position the employee had before going out on leave. This means holding a position open for three months or more. While an employer can temporarily fill the position with a new employee, that replacement usually comes at a premium. A replacement employee knows it is short term and, therefore, requires a premium wage, is less dedicated to the position, and often leaves for a better opportunity at a moment’s notice. Also, many jobs require extensive amount of time and money to train a new employee, adding another cost. Some employers shift the work to other existing employees, which often leads to overtime pay. And, most of the leaves of absence require employers to maintain health benefits while the employee is out.”

Prior and Related Legislation

AB 3216 (Katra) of 2020 proposes to, among other things, expand CFRA leave to include leave to care for a family member whose school or place of care has been closed or is unavailable due to a state of emergency and leave because of an employee’s inability to work (or telework) due to various circumstances related to a state of emergency.

SB 135 (Jackson) of 2019 proposed to: (1) reduce the employee threshold and time of service to require to prohibit employers with five or more employees from refusing to grant an employee request to take up to 12 weeks of unpaid leave for family care and medical leave if the employee had 180 days of service with the employer; (2) expand the reasons for which CFRA leave can be taken; (3) expand the list of individuals for which an employee can take leave under CFRA to

include children-in-law, grandparents, grandchildren, siblings, domestic partners, parents-in-law, or a designated person; and (4) expands the scope of Paid Family Leave to include time off to care for a seriously ill designated person or child-in-law, as defined, or to bond with a designated person or child-in-law within one year of the birth or placement of that individual. This bill died on the Senate inactive file.

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 the 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 of the United States, as specified. It takes effect in January 2021.

SB 63 (Jackson), Chapter 686, Statutes of 2017, enacted the New Parent Leave Act prohibiting an employer, of 20 or more employees, from refusing to allow an eligible employee to take up to 12 weeks of job protected parental leave to bond with a new child within one year of the child's birth, adoption or foster care placement.

AB 908 (Gomez) Chapter 5, Statutes of 2016, among other things, revised the formula for determining benefits pursuant to the State Disability Insurance program and the Paid Family Leave program to increase benefits to workers providing a wage replacement of approximately 60 to 70 percent, depending on income, as specified.

SB 406 (Jackson) of 2015 proposed to expand CFRA by 1) removing from the definition of "child" the provisions related to age and dependent status of the child; (2) expanding permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, domestic partner, or parent-in-law with a serious health condition; and (3) allowing parents, when employed by the same employer, to be granted up to 12 weeks of leave individually rather than between both parents. This bill was vetoed by Governor Brown.

SB 770 (Jackson) Chapter 350, Statutes of 2013, expanded the scope of PFL to include time off to care for seriously ill siblings, grandparents, grandchildren, and parents-in-law.

AB 2039 (Swanson) of 2012 proposed to expand protections afforded by CFRA by 1) removing from the definition of "child" the provisions related to age and dependent status of the child; 2) expanding the scope of permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, or parent-in-law with a serious health condition; and 3) specifying that permissible leave includes leave to care for a domestic partner with a serious health condition. This bill was held in the Senate Appropriations Committee.

AB 59 (Swanson) of 2011 proposed to expand protections afforded by CFRA by 1) removing from the definition of "child" the provisions related to age and dependent status of the child; 2) expanding the scope of permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, or parent-in-law with a serious health condition; and 3) specifying that permissible leave includes leave to care for a domestic partner with a serious health condition. This bill was held in the Assembly Appropriations Committee.

AB 849 (Swanson) of 2009 proposed to expand protections afforded by CFRA by 1) removing from the definition of "child" the provisions related to age and dependent status of the child; 2) Expanding the scope of permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, or parent-in-law with a serious health condition; and 3)

specifying that permissible leave includes leave to care for a domestic partner with a serious health condition. This bill was held in the Assembly Appropriations Committee.

AB 537 (Swanson) of 2007 proposed to expand protections afforded by CFRA by 1) removing from the definition of "child" the provisions related to age and dependent status of the child; 2) expanding the scope of permissible family and medical leave to include leave to care for a sibling, grandparent, grandchild, or parent-in-law with a serious health condition; and 3) specifying that permissible leave includes leave to care for a domestic partner with a serious health condition. The bill was vetoed by Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:

Support

9to5 National Association of Working Women

AARP

Alliance of Californians for Community Empowerment (ACCE) Action

American Association of University Women - California

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties

California Labor Federation, Afl-cio

California State Council of Service Employees International Union (seiu California)

California Teachers Association

California Work and Family Coalition

Child Care Law Center

Closing the Women's Wealth Gap

Community Legal Services in East Palo Alto

Ella Baker Center for Human Rights

Equal Rights Advocates

Equality California

First 5 CA

Friends Committee on Legislation of California

Health Access California

LA Best Babies Network

Legal Aid At Work

Military Officers Association of America, California Council of Chapters

Naral Pro-choice California

National Council of Jewish Women Los Angeles

National Women's Political Caucus of California

Public Counsel

Santa Barbara Women's Political Committee

Stronger California Advocates Network

The Women's Foundation of California

Unite-la, INC.

United Food and Commercial Workers, Western States Council

Vietnam Veterans of America, California State Council

Work Equity Action Fund

Worksafe

Numerous Individuals

Oppose

African American Farmers of California
Agricultural Council of California
American Institute of Architects California
American Pistachio Growers
Associated Builders and Contractors Northern California Chapter
Associated General Contractors
Association of California Egg Farmers
Auto Care Association
Brea Chamber of Commerce
Building Owners and Managers Association
California Agricultural Aircraft Association
California Apple Commission
California Association of Joint Powers Authorities (CAJPA)
California Association of Wheat Growers
California Association of Winegrape Growers
California Attractions and Parks Association
California Bankers Association
California Bean Shippers Association
California Blueberry Association
California Blueberry Commission
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Craft Brewers Association
California Dental Association
California Employment Law Council
California Farm Bureau Federation
California Financial Services Association
California Food Producers
California Forestry Association
California Fresh Fruit Association
California Grain & Feed Association
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractor's Association
California Manufacturers & Technology Association
California Metals Coalition
California New Car Dealers Association
California Pear Growers Association
California Restaurant Association
California Retailers Association

California Seed Association
California Special Districts Association
California State Council of The Society for Human Resource Management (CALSHRM)
California State Floral Association
California Tomato Growers Association
California Travel Association
California Trucking Association
California Warehouse Association
Camarillo Chamber of Commerce
Cawa - Representing the Automotive Parts Industry
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
City of Oceanside
Civil Justice Association of California
Commercial Real Estate Development Association, NAIOP of California
Construction Employers' Association
Csac Excess Insurance Authority
Dana Point Chamber of Commerce
El Centro Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Encinitas Chamber of Commerce
Family Business Association of California
Far West Equipment Dealers Association
Flasher Barricade Association
Folsom Chamber of Commerce
Fountain Valley Chamber of Commerce
Fresno Chamber of Commerce
Gateway Chambers Alliance
Gilroy Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Riverside Chamber of Commerce
Insights Association
International Council of Shopping Centers
Laguna Niguel Chamber of Commerce
League of California Cities
Long Beach Chamber of Commerce
Los Angeles Area Chamber of Commerce
Modesto Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business (NFIB)
Nisei Farmers League
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Olive Growers Council of California
Orange County Business Council
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce

Redding Chamber of Commerce
Salinas Valley Chamber of Commerce
San Clemente Chamber of Commerce
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Silicon Valley Organization, the
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tracy Chamber of Commerce
Ucan Chambers of Commerce
Western Electrical Contractors Association
Western Growers Association
Western Manufactured Housing Communities Association
Western Plant Health Association

Analysis Prepared by: Justin Delacruz / L. & E. /