

Date of Hearing: August 18, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee: Labor and Employment

Vote: 5 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill expands the California Family Rights Act (CFRA) to provide job-protected leave to additional workers. Specifically, this bill:

- 1) Extends CFRA's medical and family leave protections through the following policy changes:
 - a) Requires an employer with at least 5 employees (rather than at least 50 employees) grant an employee request to take up to 12 weeks of unpaid leave for family care and medical leave if the employee has had 180 days of service with the employer.
 - b) Provides CFRA leave protections for employees to care for additional types of family members, including domestic partners, children of domestic partners, grandparents, grandchildren, siblings and parents-in-law.
 - c) Removes from existing law a provision that authorizes an employer, under specified conditions, to refuse to reinstate an employee returning from leave to the same or comparable position the employee held prior to the leave.
- 2) Repeals the California New Parents Leave Act of 2017, on January 1, 2021.

FISCAL EFFECT:

General Fund administrative costs to the Department of Fair Employment and Housing (DFEH) of approximately \$1.1 million to process an estimated 2,300 additional CFRA complaints. (See Comment #3 for cost assumptions.)

COMMENTS:

- 1) **Background.** California workers have access to a patchwork of paid and unpaid job-protected leave options for medical or caregiving reasons. Those options include:
 - a) CFRA and the federal Family and Medical Leave Act (FMLA), required to be taken concurrently, entitles an eligible worker of an employers with 50 or more employees to take up to 12 workweeks of unpaid, job-protected leave during a 12-month period for specified family and medical reasons, including time to bond with a new child through birth, adoption or foster care placement. CFRA and FMLA also guarantee reinstatement to the same or comparable position and provide continued group health coverage, under the same terms and conditions, during the duration of the leave.

- b) Paid Family Leave (PFL) provides up to eight weeks of partial wage replacement benefits for a worker who takes time off to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling or domestic partner or to bond with a minor child.
- a) Pregnancy Disability Leave (PDL) requires an employer with five or more employees to provide up to four months of unpaid, job-protected leave for pregnancy, childbirth or related conditions. Such an employee may use accrued vacation and paid sick leave during PDL and is entitled to reasonable accommodations and reinstatement to the job held before PDL began. The employer is required to continue health coverage during PDL.
- b) New Parent Act Leave (NPL) requires an employer with at least 20 employees must offer 12 weeks of unpaid leave to workers to bond with a new child. An employee may not take more than 12 weeks of unpaid leave in a one-year period.

The chart on the following page, put together by staff of the Senate Budget and Fiscal Review Committee, summarizes the different leave options currently available:

	CFRA/FMLA (Job Protected)	PFL (No Job Protection)	PDL (Job Protected)	NPL (Job Protected)
Employers Covered	50 or more employees in 75 mile radius of worksite	One or more (employee pays, employee gets)	Five or more employees	20 or more employees
Employee Eligibility	Worked 1,250 hours in prior 12 months	Once employee earns \$300 in base period for fund contribution	Immediate as necessary	Worked 1,250 in prior 12 months
Reason for Leave	Employee serious health condition; seriously ill family member care; bond with newborn or newly placed adopted or foster child	Care for seriously ill family member; bond with a child within 1 year of birth, foster care or adoption placement; or participate in qualifying active duty exigency	Disability due to pregnancy, childbirth or related medical condition	Bond with a child w/in 1 year of birth, adoption or foster care placement
Length of Leave	12 weeks in 12-month period	8 weeks in 12-month period	Up to 4 months	Up to 12 weeks
Paid or Unpaid	Unpaid, may run concurrent with other paid leave	Partial wage replacement	Unpaid, may run concurrent with SDI for partial wage	Unpaid, employee can use vacation, paid sick time

			replacement	
Continued Health Coverage	Yes	No	Yes	Yes
Source: Senate Budget and Fiscal Review Committee				

- 3) **DFEH costs.** An employee who believes employer has violated their CFRA rights can file a complaint with DFEH. DFEH then conducts an impartial investigation and tries to assist both parties to resolve the complaint. In some cases, DFEH may litigate the case in civil court. The fiscal impact of this bill will depend on the number of new CFRA-related complaints per year filed by employees because of the bill's provisions, and this number is subject to significant uncertainty. Generally, CFRA-related complaints represent a small portion of the approximately 23,000 complaints that DFEH receives each year. However, this bill expands CFRA significantly, and the precise impact on DFEH's workload is unknown.

The committee's estimate of the cost of this bill relies on DFEH's Budget Change Proposal (BCP) to fund anticipated workload from the New Parent Leave Act of 2017. The NPL program, described in more detail above, extended CFRA's bonding leave protections to employers with 20 to 49 employees. The BCP assumes 400 additional complaints per year at an annual cost of \$210,000. The BCP also contends that this type of leave represents around one third of CFRA-related complaints, suggesting an additional 800 complaints each year if the rest of CFRA were expanded to the same employer group. This analysis then assumes an additional 1,500 complaints to extend CFRA to employers with between 5 to 19 employees, which is a modest increase over the assumed increase in complaints for employees with between 20 and 49 employees.

- 4) **Purpose.** Despite the available leave options described above, significant inequities persist across different types of employers and workers. An employee's access to job-protected leave depends almost entirely on the size of their employer and the nature of leave. This bill chips away at those inequities by absorbing the new bonding rights established by the New Parent Leave Act in 2017, more broadly applying CFRA protections to employees of smaller businesses, and providing more consistency across leave options.

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" but that the state's laws do not align. As a result, this "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."

- 5) **Opposition.** Organizations representing business groups and employers oppose this bill, citing a range of concerns related to the potentially harmful impact on businesses. The California Chamber of Commerce argues this bill will lead to costly litigation and impose a significant administration burden. During the Assembly Labor Committee's hearing on this

bill, opponents also cited the challenge of imposing new leave requirements and costs on small businesses during an economic downturn.

- 6) **“Stacking” leave.** Some of the debate in the Assembly Labor Committee’s hearing of this bill revolved around how much unpaid leave will be available to workers. Opponents assert this bill grants up to 24 weeks of unpaid leave. While this is possible, such a scenario is likely to be rare.

SB 1383 makes a range of changes to CFRA that bring it out of conformity with FMLA. As a result, CFRA now offers 12 weeks of job-protected unpaid leave for scenarios not covered by federal law. In theory, a worker could take unpaid leave for one of the newly CFRA-covered events – such as caring for a sick grandparent – and then take additional leave for an FMLA-covered event, such as for the employee’s own medical issues. However, there are a number of reasons why this much unpaid leave in a 12-month period is unlikely to occur, except in some extreme scenarios. First, most employees simply cannot afford to take this amount of unpaid leave in a single year. Second, data on paid family leave usage, the wage replacement program whose leave provisions track those of this bill, shows that its quite rate (around 4% of claims) for workers to take leave that does not conform with FMLA

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