
THIRD READING

Bill No: AB 1041
Author: Wicks (D), et al.
Amended: 4/22/21 in Assembly
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/21/21
AYES: Cortese, Durazo, Laird, Newman
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 53-16, 5/28/21 - See last page for vote

SUBJECT: Employment: leave

SOURCE: California Employment Lawyers Association
California Work and Family Coalition
Equal Rights Advocates
Equality California
Legal Aid at Work

DIGEST: This bill adds a “designated person” to the list of individuals for whom an employee may take leave to care for under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days). This bill (1) defines “designated person” as a person identified by the employee at the time of the request, and (2) allows employers to limit the employee to one designated person per 12-month period.

ANALYSIS:

Existing law:

- 1) Makes it an unlawful employment practice, under CFRA, for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12

workweeks of *unpaid, job-protected* leave during any 12-month period to:

- a) Care for a child born to, adopted by, or placed for foster care with the employee.
- b) Care for the employee's child, parent, grandparent, grandchild, siblings, spouse, or domestic partner who has a serious health condition, as defined.
- c) Address an employee's own serious health condition rendering them unable to perform the functions of their job.
- d) 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. (Government Code §12945.2)

2) Specifies the following with regards to CFRA:

- a) Defines "employer" as any person who directly employs five or more employees, including the state and cities.
- b) Eligible employees must have at least 1,250 hours of service with the employer during the previous 12-month period.
- c) Requires the employer to maintain and pay for coverage under a "group health plan" for the duration of the leave at the same level and conditions.

3) Establishes the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days) requiring an employer to provide an employee a minimum of 24 hours or three days of paid sick leave per year to be used for the following reasons:

- 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 to seek medical attention for injuries, obtain victim services, mental health service, and participate in safety planning.
- c) Defines "family member" to mean any of the following:
 - i) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis, regardless of age or dependency status.
 - ii) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or their spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
 - iii) A spouse or registered domestic partner.
 - iv) A grandparent, grandchild, or sibling. (Labor Code §245-249)

This bill:

- 1) Expands the list of individuals for whom an employee can take leave under the CFRA and the Healthy Workplaces, Healthy Families Act of 2014 to include a designated person by the employee.
- 2) Defines a “designated person” as a person identified by the employee at the time the employee requests CFRA leave or paid sick days and authorizes employers to limit employees to one designated person per 12-month period.

Background

Recent Changes to CFRA. California employees may be entitled to several medical leaves depending on the size of their employer and the reason for the leave. Last year, SB 1383 (Jackson, Chapter 86, Statutes of 2020) made historic changes to the CFRA after almost a decade of attempts to reform the act. Prior to 2021, CFRA (and its federal counterpart, the Family and Medical Leave Act) provided for up to 12 weeks per year of unpaid job protected leave for an employee who takes time for bonding or care, however, these protections were only available to employees of businesses with 50 or more workers. Employees of smaller businesses were entitled to take Paid Family Leave (PFL) (PFL is part of the State Disability Insurance program administered by the Employment Development Department) and receive a partial wage replacement; however, PFL does not offer any job protection which limits a worker’s financial ability to take the leave. CFRA, FMLA and PFL are all required to be taken concurrently, so for employees working for employers of 50 or more, their leave required employers to hold their jobs until their return.

Effective January 1, 2021, among other things, SB 1383 extended CFRA’s medical and family leave protections through the following policy changes:

- 1) Requires an employer with at least five employees (rather than at least 50 employees) to grant an employee request to take up to 12 weeks of unpaid leave for family care and medical leave, as specified.
- 2) Provides CFRA leave protections for employees to care for additional family members, including domestic partners, children of domestic partners, grandparents, grandchildren, siblings and parents-in-law.

Comments

Need for this bill? According to the author, “Due to cultural, economic and social forces, the overwhelming majority of households today depart from the “nuclear family” model of a married couple and their biological children—instead, they increasingly include close loved ones who aren’t biologically or legally related. Still, California’s family leave laws continue to reflect the outdated nuclear family model and only allow workers time off to care for certain narrowly defined family members. This policy gap disproportionately affects California’s LGBTQI community. Many LGBTQI adults, especially older adults, do not have accessible relationships with biological relatives. As a result, they are less likely to have biological family or partner support when they need care and often rely on chosen family.

California also has a higher percentage of extended families living in multigenerational households and it is not uncommon for individuals in California to be living with cousins, aunts, uncles, and other relatives not covered by our leave laws, especially as families weather the COVID-19 pandemic. Aging adults also rely on a wide network of relationships for caregiving that are not recognized by current law. Many caregivers are partners, neighbors or friends. Among Americans who provide care to an adult age 65 or older, more than 23% provide care for a friend, neighbor, or other unrelated person. This has become even more important during the COVID-19 pandemic when many older adults live alone and have families who live far away.”

This bill will allow workers to use existing time off to care for a “designated person,” of their choosing, thereby creating equitable access to job protected family caregiving and sick leave for all of California’s working families.

Related/Prior Legislation

AB 995 (L. Gonzalez, 2021) expands the state’s paid sick leave program to provide an employee with no less than 40 hours or five days of sick leave by the 200th calendar of employment. AB 995 is on the Assembly inactive file.

AB 1119 (Wicks, of 2021) expands the list of protected characteristics under the California Fair Employment and Housing Act to include “family responsibilities,” defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient. AB 1119 is pending in Assembly Appropriations Committee.

SB 1383 (Jackson, Chapter 86, Statutes of 2020) expanded the CFRA to provide job-protected leave to additional employees (those working for employers with five or more employees instead of the previous 50 employee threshold) and expanded the list of family members for which an employee can take leave.

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

According to the Senate Appropriations Committee:

- This bill would result in additional workload to the Department of Fair Employment and Housing to investigate and adjudicate an increased (but unknown) number of complaints related to CFRA. Total costs would likely be in the hundreds of thousands of dollars annually (General Fund).
- The Division of Labor Standards Enforcement within the Department of Industrial Relations would incur an absorbable increase in workload resulting from additional wage claims and retaliation complaints related to paid sick day requests.
- The State as a direct employer would experience additional costs for state departments to the extent this bill increases use of CFRA or paid sick days. The magnitude of these costs is unknown (General Fund and special funds).

SUPPORT: (Verified 8/26/21)

California Employment Lawyers Association (co-source)

California Work and Family Coalition (co-source)

Equal Rights Advocates (co-source)

Equality California (co-source)

Legal Aid at Work (co-source)

AARP

Access Reproductive Justice

ACLU California Action

ACLU-Northern/Southern California/San Diego and Imperial Counties

Advocates for Peace & Justice at Irvine United Congregational Church

Alliance of Californians for Community Empowerment Action

Alzheimer's Association

American Federation of State, County and Municipal Employees, AFL-CIO

API Equality-LA

Asian Pacific Islander Forward Movement

Asian Resources, Inc.

Association of California Caregiver Resource Centers

BreastfeedLA
California Alliance for Retired Americans
California Faculty Association
California Labor Federation, AFL-CIO
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Pan - Ethnic Health Network
California Partnership to End Domestic Violence
California Teamsters Public Affairs Council
California Women's Law Center
Child Care Law Center
Consumer Attorneys of California
Drug Policy Alliance
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities
Equality California
Family Caregiver Alliance
Family Caregiver Alliance, Bay Area Caregiver Resource Center
First 5 California
Friends Committee on Legislation of California
Having Our Say Coalition
Human Impact Partners
If/When/How: Lawyering for Reproductive Justice
Jewish Center for Justice
LA Best Babies Network
Los Angeles Alliance for a New Economy
Los Angeles LGBT Center
Mi Familia Vota
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Council of Jewish Women Los Angeles
National Council of Jewish Women-California
National Women's Political Caucus of California
Orange County Equality Coalition
Organization of SMUD Employees
Our Family Coalition
Prevention Institute
Public Counsel
Queer Democrats of Sacramento
Religious Coalition for Reproductive Choice California

Restaurant Opportunities Centers of California
San Diego County Breastfeeding Coalition
The Central Valley Urban Institute
Voices for Progress Education Fund
Women For: Orange County
Women's Foundation of California
Work Equity Action Fund
Working Partnerships USA

OPPOSITION: (Verified 8/26/21)

Associated General Contractors
Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Association of Joint Powers Authorities
California Beer and Beverage Distributors
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Food Producers
California Hospital Association
California Landscape Contractors Association
California Manufacturers and Technology Association
California Railroads
California Restaurant Association
California Retailers Association
California Special Districts Association
California State Association of Counties
California State Council of the Society for Human Resource Management
Carlsbad Chamber of Commerce
El Dorado Hills Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Folsom Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Housing Contractors of California

Long Beach Area Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber
North San Diego Business Chamber
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Orange County Business Council
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Plumbing-Heating-Cooling Contractors of California
Public Risk Innovation, Solutions and Management
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Santa Rosa Metro Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Western Carwash Association
Wilmington Chamber of Commerce

ARGUMENTS IN SUPPORT: According to the sponsors, “AB 1041 addresses this reality of caregiving relationships by allowing workers to take time off to care for a “designated person” identified by the employee at the time they request leave. The designated person need not be related by blood or legal relationship and an employer may limit an employee to one designated person per 12-month period. There is already significant precedent for an expanded understanding of family relationships in federal and state law. Paid family and medical leave laws in Oregon, Connecticut, New Jersey, and Colorado cover chosen family, and eight localities (including Los Angeles) have passed paid sick time laws that cover chosen family. It is time for California to join these other jurisdictions by ensuring that all Californians have the right to be there for their loved ones when it matters most, regardless of blood or legal relationship.”

ARGUMENTS IN OPPOSITION: A coalition of employer organizations, including the California Chamber of Commerce, argue in opposition that “the existing provisions of CFRA are already challenging, confusing, and burdensome,

and small employers who are struggling as a result of this pandemic are overwhelmed by the current law. AB 1041 would expand CFRA even further and allow employees to take care of any person of their choosing. Under CFRA, if an employer were to question the status of the relationship of the person for whom the employee was taking the leave, this could be seen as interfering with or discouraging the employee from taking the leave, exposing the employer to litigation.” Additionally, the coalition argues that (1) CFRA leave was just expanded this year and this bill imposes a significant burden on small employers; (2) CFRA and the Healthy Workplaces Healthy Family Act already cover time off for those individuals who stand in the shoes of an employee’s parents or are like a child to the employee under the “loco parentis” provisions; (3) leave expansions expose employers to costly litigation; (4) California employers, especially small employers, cannot afford yet another mandated increase in benefits; and (5) instead of burdening employers with more costs, the Legislature should provide more flexible work options that benefit employers and employees.”

ASSEMBLY FLOOR: 53-16, 5/28/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Friedman, Gabriel, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Choi, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Boerner Horvath, Chen, Daly, Frazier, Cristina Garcia, Maienschein, Nguyen, O'Donnell, Quirk-Silva, Ramos

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
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