

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kala, Chair

AB 1179 (Carrillo) – As Introduced February 18, 2021

SUBJECT: Employer provided benefit: backup childcare

SUMMARY: Requires employers with 1000 or more employees, on or after January 1, 2022, to provide 60 hours of paid backup childcare benefits to employees who work for the same employer for 30 or more days within a year. Specifically, **this bill:**

- 1) Finds and declares, among other things, that in order to support working families and protect children, the Legislature intends to require certain employers to make backup childcare available to their employees as an employee benefit.
- 2) Requires employers to provide a backup childcare benefit by doing one of the following:
 - a) Contracting with a licensed childcare provider and providing direct payments to the licensed provider for the hours used by the employee.
 - b) Directly paying a qualified backup childcare provider upon receipt of an invoice detailing the number of hours used by the employee.
 - c) By reimbursing an employee for up to 60 hours for backup childcare paid by the employee.
- 3) Provides for an employee to accrue the backup childcare benefit at a minimum rate of one hour per every 34 hours worked beginning at the commencement of employment or January 1, 2022, whichever is later.
- 4) Provides for employees who are exempt from overtime requirements as an administrative, executive, or professional employee, as specified, to be deemed to work 40 hours per week for purposes of backup childcare benefit accrual.
- 5) Defines backup childcare as childcare provided by a qualified backup childcare provider to the employee's child when the employee's regular childcare provider cannot be utilized.
- 6) Defines paid backup childcare or paid backup childcare benefit as an employee benefit consisting of an employer paying for a qualified backup childcare provider to provide backup childcare for an employee's child that is compensated at the state minimum wage or the federal minimum wage, whichever is higher.
- 7) Defines qualified backup childcare provider to mean either of the following:
 - a) Childcare providers licensed by the State Department of Social Services
 - b) License-exempt childcare providers, as specified.
- 8) Exempts employees that are covered by collective bargaining agreements and certain employees of air carriers from coverage.

- 9) Specifies that an employer is not required to provide compensation to an employee for accrued, unused paid backup childcare benefits upon termination, resignation, retirement, or other separation of employment.
- 10) Specifies that an employee that separates from an employer and is rehired within one year from the date of separation that previously accrued backup childcare benefits shall be reinstated in the backup childcare program, as specified.
- 11) Defines employer as any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.
- 12) Defines a child as a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.
- 13) Requires employers to keep records, subject to inspection by the Labor Commissioner (LC) documenting the hours worked and paid backup childcare benefits accrued and used by an employee for a minimum of three years.
 - a) States that it will be presumed that an employee is entitled to the maximum number of backup childcare hours accruable if the employer does not maintain adequate records as specified.
 - b) States that notwithstanding any provision of this article, an employer is not obligated to inquire into or record the purposes for which an employee uses the paid backup childcare benefit and that an employer shall not compel an employee to provide documentation verifying use of their first 60 hours.
 - c) States that this section shall preempt any local ordinance to the contrary.
- 14) Specifies that this article shall not be construed to discourage or prohibit an employer from adopting or retaining a backup childcare policy that is more generous than the one required under this provision.
- 15) Specifies that this article does not lessen the obligations of an employer with a contract, collective bargaining agreement, employment benefit plan, or other agreement that provides a more generous backup childcare benefit to an employee.
- 16) Establishes minimum requirements pertaining to the backup childcare benefit and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, policy, or standard that provides for greater accrual or use by employees of the paid backup childcare benefit or that extends other protections to an employee.

EXISTING LAW:

- 1) Establishes the Healthy Workplaces, Healthy Families Act of 2014 that requires an employer to provide an employee as specified, 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.
- 2) Defines employer as any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.
- 3) Exempts employees that are covered by collective bargaining agreements and certain employees of air carriers from coverage under this provision.
- 4) Permits an employee to use accrued paid sick days beginning on the 90th day of employment.
- 5) Defines family member to mean any of the following:
 - a) 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.
 - b) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
 - c) A spouse or registered domestic partner.
 - d) A parent, grandchild, or sibling
- 6) Prohibits an employer from requiring an employee to find a replacement worker to cover the days during which the employee uses paid sick days.

FISCAL EFFECT: Unknown

COMMENTS: According to a recent report by the California Budget & Policy Center, “The COVID-19 pandemic has exposed many Californians and Americans to unprecedented economic instability, but many women in California were already struggling to pay the bills prior to the onset of the economic crisis. Pre-pandemic hardship and lack of economic security was particularly acute for American Indian, Black, Latinx, and Pacific Islander women in California.”¹ This report recommends that in order for California to foster an equitable economic recovery, the state should “help workers balance career and caregiving responsibilities — particularly women with low incomes who are far less likely to have employer-provided benefits.”

Several large technology companies, including Apple, Inc., Microsoft Corp., Facebook Inc., and Alphabet Inc., already provide backup childcare benefits.² Still, the percentage of U.S. employers offering this benefit is low. According to Bloomberg News, “A tight labor market has pushed benefits to the forefront, making them a powerful recruiting and retention tool, especially in the

¹ Schumacher, Kristin. *The COVID-19 Recession Further Undercuts California Women's Opportunities for Economic Security*. California Budget & Policy Center, March, 2021.

² Greenfield, Rebecca and Soper, Spencer. *Holdout Jeff Bezos Confronted by Amazon Moms Demanding Day Care*. Bloomberg News, March, 2019.

competitive technology industry. Despite some companies providing these type of benefits, according to a 2017 national study of employers, only 9% of employers with 1000 or more workers offer backup or emergency childcare benefits.³

According to the author, “[This bill] prioritizes support for hard-working parents and protects children by requiring companies with 1,000 or more employees to provide backup child care as a direct benefit for their employees. Increasing access to child care is essential to keeping women in the workforce as COVID-19 has impacted women and even more so women of color at disproportionate rates. Data shows that 74% of women have cited inadequate backup child care as one of the top reasons for dropping out of the workforce. We are grappling with an economic downturn where job loss, income losses, and other markers of household hardship have genderized our understanding of our society and caused women to bear the burden. Increasing access to childcare is essential to keeping women in the workforce and will make California companies stronger and more competitive while ensuring working mothers are not left behind in the economic recovery.”

Arguments in Support

According the Vote Mama Foundation, “Increasing backup care options will bolster the long-term economic growth and earning potential for women, many of whom are breadwinners for their families and are women of color. The National Women’s Law Center reports that single mothers of young children who received a company subsidy for childcare were 40% more likely to still be employed after two years. This legislation will also professionalize the work of childcare providers, particularly for community care, which often goes unpaid. Businesses have the opportunity to do good, and do well. The U.S. Chamber of Commerce Foundation found that when companies provide support for childcare, absences decrease, job satisfaction increases and job turnover declines by as much as 60%. The cost to employers to subsidize 60 hours of backup child care for employees is approximately \$50 per employee, per year. Research shows that a business with 1,000 employees stands to save \$300,000 per year on their \$50,000 investment.”

Arguments in Opposition

A coalition of employer organizations, including the California Chamber of Commerce, argue in opposition that “[This bill] imposes another California-only employee requirement, by forcing employers to pay for up to 60 hours of childcare for each employee. While the bill is ostensibly applicable only to large employers with 1,000 or more employees, those employees don’t necessarily need to be located in California for this law to apply. Employers with a limited workforce in California would still be exposed to this new mandate if they have a larger workforce in other states, further encouraging these employers to leave California.

Further, while [This bill] purports to only cover “backup” childcare benefits, there is nothing in the bill that would prevent an employee from using the 60 hours of paid benefits each year for primary childcare costs. Section 2953(b) provides that an employer may not require an employee to provide documentation verifying use of their first 60 hours. Therefore, an employer is not allowed to verify that the employee is indeed using the leave for backup childcare needs instead of primary care.”

³ Bond, James, Galinsky, Ellen, and Matos, Kevin. *National Study of Employers*. Society for Human Resource Management, 2017.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alliance for Children's Rights
California Faculty Association
Numerous Individuals
Vote Mama Foundation

Oppose

Associated General Contractors
Association of California School Administrators
Auto Care Association
California Association for Health Services At Home
California Beer and Beverage Distributors
California Building Industry Association
California Chamber of Commerce
California Farm Bureau
California Grocers Association
California Manufacturers and Technology Association
California Restaurant Association
California State Association of Counties
California Trucking Association
Cawa - Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Construction Employers' Association
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Housing Contractors of California
Long Beach Area Chamber of Commerce
National Electrical Contractors Association
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Plumbing-heating-cooling Contractors Association of California
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce

Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Union Roofing Contractors Association
United Contractors

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