

Date of Hearing: March 30, 2022

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 2182 (Wicks) – As Introduced February 15, 2022

**SUBJECT:** Discrimination: family responsibilities

**SUMMARY:** Expands the employment anti-discrimination provisions of the Fair Employment and Housing Act (FEHA) to include an applicant or employee's family responsibilities and requires an employer to engage in an interactive process to reasonably accommodate such responsibilities that are known to the employer and are due to an unforeseen closure or unavailability of a minor child or care recipient's school or care provider. Specifically, **this bill:**

- 1) Expands the protected characteristics under FEHA's anti-discrimination provisions to include family responsibilities.
- 2) Defines family responsibilities to mean the obligations of an employee or applicant to provide care for a minor child or a care recipient.
- 3) Defines a care recipient to mean a family member or household member of an employee or applicant who relies on the employee or applicant for medical care or for assistance with activities of daily living.
- 4) Defines family member to mean a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose close association with the employee or applicant is the equivalent of a family relationship.
- 5) Provides it is an unlawful employment practice for an employer or other entity to do any of the following:
  - a) Fail to make reasonable accommodation for the known family responsibilities of an applicant or employee unless it would produce an undue hardship. Defines, for this purpose, "family responsibilities" as responsibilities related to obligations arising from needing to care for a minor child or care recipient due to an unforeseen closure or unavailability of a minor child or care recipient's school or care provider, excluding planned holidays.
  - b) Fail to engage in a timely, good faith, interactive process to determine effective reasonable accommodations upon an employee or applicant's request for a reasonable accommodation based on known family responsibilities.
  - c) Retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision.
- 6) Provides that except as required in (5), the bill does not create an obligation for an employer to make reasonable accommodations for family responsibilities, as long as the employer's policies and practices, including those related to leave, scheduling, absenteeism, work performance, and benefits, are applied in a nondiscriminatory manner.

**EXISTING LAW:**

- 1) Establishes the FEHA, which protects the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- 2) Prohibits, under the provisions of FEHA, various forms of employment discrimination, including discharging or refusing to hire or to select for training programs any person based on his or her protected status.
- 3) Defines employer under FEHA to mean any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities except a religious organization or a corporation not organized for private profit.
- 4) Provides that it is an unlawful employment practice for an employer or other entity to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.
- 5) Provides that it is an unlawful employment practice for an employer or other entity to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

**FISCAL EFFECT:** Unknown

**COMMENTS:** Note: This bill is double-referred to the Assembly Judiciary Committee upon passage out of this Committee.

According to a 2016 national survey, family responsibilities discrimination (FRD) claims are widespread, on the rise, and found in every industry.<sup>1</sup> In fact, “FRD cases have risen 269% over the last decade – a period when federal employment discrimination cases decreased.”<sup>2</sup> Factors such as increased elder care responsibilities and a higher rate of households with both parents working have contributed to this uptick in litigation. For many working parents, especially during this pandemic, the concept of “work life balance” feels illusory and unattainable.

California is not the first jurisdiction to consider extending legal protections to employees with family responsibilities. A recent report by the Center for Worklife Law at UC Hastings found that 195 state and local jurisdictions have laws that prohibit employers from discriminating against employees because they are parents. Four states have such laws. Almost a third of the U.S. workforce or around 50 million employees work in a jurisdiction that has an FRD law

---

<sup>1</sup> Cynthia Thomas Calvert, “Caregivers in the Workplace,” The Center for Worklife Law, University of California Hastings Law, 2016.

<sup>2</sup> Ibid.

covering discrimination against parents.<sup>3</sup> Current FRD laws are generally more protective than federal employment laws as they cover more categories of “parents” and define family responsibilities to include caring for extended family members. In addition, many of these laws apply to small and large employers alike- recognizing the need for job protection whether an employee works at a small firm or a large company.

According to the author, “COVID-19 has had a devastating impact on women in the workforce, particularly women of color. As we know women disproportionately take on caregiving responsibilities. We are seeing more women putting their careers on the backburner, in order to care for their families throughout the pandemic.

According to the Department of Labor, roughly 60 percent of two-parent households with children under age 18 have both parents working — a reality that has significant impacts on both employees and their employers. Moreover, more than 1 in 6 Americans working full-time or part-time report assisting with the care of an elderly or disabled family member, relative, or friend and over 1 in 12 employed adults are caring for both children and elderly or disabled adults. Most employees will have caregiving obligations at some point in their professional lives, and may encounter discrimination for those responsibilities. Employment actions like termination may be based on biases about how workers with family caregiving responsibilities will or should act, without regard to the workers’ actual performance or preferences.

California must create a workplace that allows women, and individuals with family responsibilities to regain and maintain employment long after the pandemic. AB 2182 prohibits discrimination against employees based on their family responsibilities, ensuring job security while tending to their family’s needs.”

### **Committee Comments**

While protecting workers from discrimination based on family responsibilities is an important policy goal, the reasonable accommodation requirement, as drafted, is impractical. Committee staff questions how unforeseen events related to known family responsibilities, particularly those where only short notice is given, can be accommodated by an employer utilizing a timely, good faith, and interactive process. The reasonable accommodation process is meant to be an ongoing and evolving discussion between an employer and an employee. The author may wish to consider revising this language to require an accommodation process for family responsibilities that are regularly scheduled or fixed.

### **Arguments in Support**

A coalition of labor and social justice organizations, including the California Work and Family Coalition, is in support and states, “Caregiver bias generally stems from assumptions about how caregivers will act (such as mothers will prioritize their families over work) or how they should act (such as fathers should not take time off from work to care for their children). These assumptions affect personnel decisions, including who gets furloughed, terminated, hired, and promoted.

---

<sup>3</sup> “Protecting Parents During COVID-19: State and Local FRD Laws Prohibit Discrimination at Work,” The Center for Worklife Law, University of California Hastings Law, November 2020.

AB 2182 addresses family responsibilities discrimination by simply prohibiting the disparate treatment of employees because of their family responsibilities. In other words, the bill prohibits employers from treating a worker adversely based on assumptions or stereotypes associated with their family responsibilities.”

### **Arguments in Opposition**

A coalition of employer organizations, including the California Chamber of Commerce, is opposed and states, “AB 2182 proposes to add any individual with “family responsibilities” as a new protected class under FEHA. That term is broadly defined to include any worker who 1) has a child under 18 or 2) provides care for anyone in their family or household, including a non-family member. “Family member” as defined is significantly more broad than any other statute and would include anyone related by blood or anyone the employee considers to be like family. According to the Bureau of Labor Statistics, one third of employees have a child under 18. When you add in the number of employees that may care for someone they live with or a family member, far more than 33% of workers would therefore fall under this new protected class.

Adding a new classification to the list under FEHA limits an employer’s ability to enforce employment policies, including attendance policies. Any action taken by the employer could be challenged as discrimination based on “family responsibilities.” For example, even if the employee did not request time off as an accommodation and simply took time off, whenever they wanted, scheduled or unscheduled, the employer could not discipline or terminate the employee for the time off without facing potential litigation under FEHA for discrimination based on family responsibilities. This will significantly limit an employer’s ability to address discipline issues in the workplace, maintain stability, and eradicate any issues without costly litigation.”

### **Prior Legislation**

SB 114 (Committee on Budget and Fiscal Review) Chapter 4, Statutes of 2022 provides COVID-19 supplemental paid sick leave for employees of employers with 26 or more employees beginning January 1, 2022. One basis for the leave is when the employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

AB 1119 (Wicks) of 2021 was similar to this bill and died in the Assembly Appropriations Committee.

AB 1041 (Wicks) of 2021 would, for purposes of the California Family Rights Act, the Healthy Workplaces, Healthy Families Act of 2014, and the Paid Family Leave program, expand the persons that may be cared for by an employee to include an individual related by blood or whose close association with the employee is the equivalent of a family relationship. The bill is on the Senate Floor.

AB 1179 (Carrillo) of 2021 would require an employer to provide an employee, on or after January 1, 2022, who works for the same employer for 30 or more days within a year from the commencement of employment, with up to 60 hours of paid backup childcare benefits, to be accrued and used as provided. This bill died in the Assembly Appropriations Committee.

SB 579 (Jackson) Chapter 802, Statutes of 2015 expanded the authorized reasons for which an employee may take job-protected time off work without the fear of discrimination or discharge under the Family School Partnership Act to allow workers to take time off to (a) find, enroll, or reenroll his or her child in a school of with a licensed child care provider, and (b) to address a child care provider or school emergency.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Employment Lawyers Association (Co-Sponsor)  
Equal Rights Advocates (Co-Sponsor)  
Legal Aid At Work (Co-Sponsor)  
Access Reproductive Justice  
ACLU California Action  
Association of California Caregiver Resource Centers  
Breastfeedla  
Business & Professional Women of Nevada County  
California Alliance for Retired Americans  
California Breastfeeding Coalition  
California Catholic Conference  
California Labor Federation  
California Latinas for Reproductive Justice  
California Partnership to End Domestic Violence  
California WIC Association  
California Women's Law Center  
California Work & Family Coalition  
Child Care Law Center  
Citizens for Choice  
Friends Committee on Legislation of California  
Girls Republic  
Human Impact Partners  
Jewish Center for Justice  
LA Alliance for A New Economy  
LA Best Babies Network  
Naral Pro-choice California  
National Council of Jewish Women Los Angeles  
National Council of Jewish Women-California  
Orange County Equality Coalition  
Prevention Institute  
Public Counsel  
Roc CA  
Stronger California Advocates Network  
Women's Foundation California

### **Oppose**

Associated General Contractors  
Auto Care Association

Brea Chamber of Commerce  
California Apartment Association  
California Association of Joint Powers Authorities  
California Association of Winegrape Growers  
California Beer and Beverage Distributors  
California Building Industry Association  
California Chamber of Commerce  
California Farm Bureau  
California Food Producers  
California Hospital Association  
California Landscape Contractor's Association  
California Landscape Contractors Association  
California Manufacturers & Technology Association  
California New Car Dealers Association  
California Railroads  
California Restaurant Association  
California Retailers Association  
California State Council of The Society for Human Resource Management  
Carlsbad Chamber of Commerce  
CAWA - Representing the Automotive Parts Industry  
Civil Justice Association of California  
Construction Employers' Association  
Corona Chamber of Commerce  
El Dorado Hills Chamber of Commerce  
Encinitas Chamber of Commerce  
Family Business Association of California  
Family Winemakers of California  
Folsom Chamber of Commerce  
Fountain Valley Chamber of Commerce  
Fremont Chamber of Commerce  
Fresno Chamber of Commerce  
Garden Grove Chamber of Commerce  
Gilroy 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  
Imperial Valley Regional Chamber of Commerce  
Kern County Hispanic Chamber of Commerce  
LA Canada Flintridge Chamber of Commerce  
Lodi Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Mission Viejo Chamber of Commerce  
Murrieta Wildomar Chamber of Commerce  
National Federation of Independent Business  
Newport Beach Chamber of Commerce  
North San Diego Business Chamber

Oceanside Chamber of Commerce  
Official Police Garages of Los Angeles  
Orange County Business Council  
Pleasanton Chamber of Commerce  
Plumbing-heating-cooling Contractors Association 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 Ana Chamber of Commerce  
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  
West Ventura County Business Alliance  
Western Car Wash Association  
Wilmington Chamber of Commerce  
Wine Institute

**Analysis Prepared by:** Megan Lane / L. & E. /