

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2182 (Wicks) – As Amended April 27, 2022

Policy Committee:	Labor and Employment	Vote:	4 - 2
	Judiciary		7 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill expands the list of protected characteristics under the Fair Employment and Housing Act (FEHA) to include “family responsibilities,” defined as an obligation to provide care for a minor child or “care recipient.” Specifically, this bill:

- 1) Defines “care recipient” as a person who: (a) is a family member or household member and (b) relies on the employee or applicant for medical care or assistance with daily living activities; and defines “family member” as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.
- 2) Makes it an unlawful employment practice for an employer to do either of the following, when aware of an employee’s need for an accommodation due to obligations arising from the need to care for a minor child or care recipient whose school or place of care experiences an unforeseen closure or unavailability:
 - a) Fail to provide an effective accommodation for the employee’s caregiving obligation, unless doing so would impose an undue hardship on the employer.
 - b) Retaliate or otherwise discriminate against an employee for requesting an accommodation or exercising any right to a needed accommodation.
- 3) Requires an employer to provide a timely response to a request for accommodation and prohibits an employer from requiring an employee to take time off work if another accommodation would enable the employee to work and be effective.

FISCAL EFFECT:

- 1) Ongoing General Fund (GF) costs of \$1.5 million to the Department of Fair Employment and Housing (DFEH) for additional staff to investigate and adjudicate approximately 250 additional complaints per year. Although DFEH cannot anticipate the precise number of potential new complaints as a result of this bill, this estimate takes into account DFEH’s experience with claims under the California Family Rights Act (CFRA), the general volume of complaints DFEH receives and the experience of other states with similar narrower protections.
- 2) GF or Trial Court Trust Fund (TCTF) cost pressures of an unknown, but potentially significant, amount to the courts in additional workload, by creating a new protection under

the FEHA subject to a cause of action. The estimated workload cost of one hour of court time is \$1,000. If additional 10 cases are filed statewide resulting in 20 hours of court time for each case, costs would be approximately \$200,000. Although courts are not funded on the basis of workload, increased pressure on the TCTF and staff workload may create a need for increased funding for courts from the GF to perform existing duties.

- 3) Costs of an unknown, but likely significant, amount to state departments to the extent this bill increases employee requests for a reasonable accommodation under FEHA, resulting in additional human resources workload, overtime pay for other employees and lost productivity. Costs may be partially offset by higher usage of vacation or other leave.

For its part, the Department of Justice (DOJ) anticipates an increase in workload representing DOJ and other state agencies in employment litigation arising from this bill, requiring two additional staff positions at an ongoing cost of approximately \$388,000 (25% GF and 75% Legal Services Revolving Fund (LSRF), with LSRF costs reimbursable through direct billings to the client agency).

COMMENTS:

- 1) **Purpose.** According to the author, all employees, but women in particular, experience conflicts between family responsibilities and job responsibilities. The author notes “women disproportionately take on caregiving responsibilities” and put “their careers on the backburner, in order to care for their families throughout the pandemic.” The author intends this bill to prohibit “discrimination against employees based on their family responsibilities, ensuring job security while tending to their family’s needs.”
- 2) **Support and Opposition.** This bill is co-sponsored by the California Employment Lawyers Association, Equal Rights Advocates and Legal Aid at work, arguing that prohibiting discrimination against employees with family responsibilities is necessary for economic security and equity, and that the reasonable accommodation standard is one “that employers are familiar with from other contexts, including disability accommodations...[which] limits accommodations to only those that work for both the employer and the employee, considering the employer’s size, financial resources, and business structure.” This bill is opposed by business groups, led by the California Chamber of Commerce, arguing that the “term ‘family responsibilities’ is broadly defined to include anyone with a child under 18 or anyone who provides care to someone in their family or household, including a non-family member...[which] creates an automatic basis for an individual in that new classification to challenge *any* adverse employment action.”
- 3) **Employment Discrimination.** FEHA prohibits employment discrimination on the basis of a number of “protected characteristics,” including 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. This bill adds “family responsibilities” to this list of protected characteristics. The definition of “family member” under this bill, however, is broader than that for which protected leave is currently granted under CFRA. This bill additionally defines “family member” to include any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

- 4) **Reasonable Accommodation.** FEHA also requires an employer to make “reasonable accommodations” for an employee with a known physical or mental disability, so long as the accommodation does not impose an undue burden on the employer. This bill additionally requires a reasonable accommodation be made for an employee with an *unforeseen* need to care for a minor child or care recipient whose school or place of care is closed or otherwise unavailable. Instead of relying on an interactive process to identify the accommodation, as required when an existing request for a reasonable accommodation is made, this bill creates a new right for an employee to be accommodated and outlines a non-exhaustive list of potential accommodations, such as excusal from mandatory overtime, remote work or temporarily restructuring job duties, amongst other options. As explained in the Assembly Judiciary Committee’s analysis of this bill, “The immediate and temporary nature of the situations contemplated by this bill...would foreclose much of the back and forth typical of the interactive process.”
- 5) **Related Legislation.** AB 1041 (Wicks) adds a “designated person” to the list of individuals for whom an employee may take leave to care for under CFRA and the Health Workplaces, Health Families Act of 2014. AB 1041 is pending on the Senate Inactive File.
- 6) **Prior Legislation.** AB 1119 (Wicks), of this legislative session, is substantially similar to this bill, except AB 1119 requires an interactive process to identify the reasonable accommodation. AB 1119 was not heard by this committee after being referred to the Suspense file.

SB 404 (Jackson), of the 2013-2014 Legislative Session, would have added “familial status” as a protected characteristic under FEHA, but did not include a reasonable accommodation provision. SB 404 was held on this committee’s Suspense File.

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