

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 524 (Wicks) – As Amended March 15, 2023

SUBJECT: Discrimination: family caregiver status

SUMMARY: Expands the protected characteristics under the Fair Employment and Housing Act's (FEHA) anti-discrimination provisions in employment to include family caregiver status.

Specifically, **this bill:**

- 1) Expands the protected characteristics under FEHA's anti-discrimination provisions in employment to include family caregiver status.
- 2) Defines family caregiver status to mean a person who contributes to the care of one or more family members.
- 3) Defines family member to mean a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose association with the employee is the equivalent of a family relationship.

EXISTING LAW:

- 1) Establishes the Civil Rights Department (CRD) to, among other things, enforce California's civil rights laws and protect Californians from discrimination in employment, housing, businesses, state-funded programs, and from bias-motivated violence, and from human trafficking.
- 2) 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. Gov. Code § 12921 (a).
- 3) 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. Gov. Code § 12940 et seq.
- 4) 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. Gov. Code § 12926 (d).

FISCAL EFFECT: Unknown

COMMENTS: The COVID-19 pandemic further revealed the struggle of many working parents to balance work responsibilities with caregiving responsibilities. According to the Department of Labor, roughly 60 percent of two-parent households with children under age 18

have both parents working.¹ Furthermore, caregiving goes beyond taking care of children as 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 friend² and over 1 in 12 employed adults are caring for both children and elderly or disabled adults.³

According to the author, “AB 524 prohibits discrimination against employees based on their status as a family caregiver.

In a time when employees are struggling to balance their jobs and caring for their families, disparate treatment because of their status as a caregiver should not be a reason for termination or other adverse employment action.

Family caregiver discrimination claims are often addressed by other existing laws - like those prohibiting discrimination because an employee has a family member with a disability, or prohibiting retaliation for taking family and medical leave. Adding family caregiver status to existing discrimination law would provide important clarification to employers that family caregiver status is protected by law.

Alaska, Delaware, Minnesota, and the State of New York have enacted similar statutes, along with close to 200 local jurisdictions throughout the country. It’s time for California to join them by explicitly protecting California’s family caregivers in the workplace.”

Furthermore, the author points out that the bill will benefit underserved and marginalized communities because “working mothers and pregnant persons are the most likely to be discriminated against because of caregiver status, with impacts even more concentrated among low-wage earners and persons of color. Adding “family caregiver status” as a protected characteristic under the Fair Employment and Housing Act will have a positive impact of these marginalized communities to seek civil redress through our justice system. Also, importantly, the conduct of employers will also change to accommodate those workers who have chosen to also be caregivers. Both outcomes would be beneficial to these Californians who have historically been underserved by our justice system.”

Committee Comments

One of the main arguments raised by AB 524 opponents is that adding family caregiver status as a protected category under the FEHA will lead to a significant spike in litigation. Yet, recent research studying the causal relationship between family caregiver anti-discrimination statutes and litigation does not support this conclusion. Researchers at the Center for Work life Law at the University of California College of the Law, San Francisco, reviewed lawsuits filed against

¹ Bureau of Labor Statistics, The Department of Labor, “Employment in Families with Children in 2016,” <https://www.bls.gov/opub/ted/2017/employment-in-families-with-children-in-2016.htm>.

² Bureau of Labor Statistics, The Department of Labor, “Unpaid Eldercare in the United States--2017-2018 Summary,” <https://www.bls.gov/news.release/elcare.nr0.htm>

³ Pew Research Center, “More than one-in-ten U.S. parents are also caring for an adult,” https://www.pewresearch.org/wp-content/uploads/2018/11/FT_18.11.29_MultiGenCare_Tables_pdf.pdf.

businesses in the four states with similar statutes to that proposed by this bill and found a total of 71 lawsuits. Furthermore, they found that the likelihood a company will be sued under a family responsibilities discrimination law is essentially zero.⁴ In fact a business owner is over five times more likely to be struck by lightning in their lifetime.⁵

Very few administrative complaints have been filed in states with a family responsibilities discrimination law. First, most complaints alleging family caregiver discrimination also included claims of other types of discrimination, so one can infer these complaints would have been filed absent the statute.⁶ Second, complaints based solely on family caregiver discrimination made up less than one percent of all employment discrimination claims that were filed with state enforcement agencies.⁷ Researchers opine that these low numbers reflect the effect such statutes have on clarifying for employers what constitutes discrimination based on family caregiving responsibilities.

Arguments in Support

The California Employment Lawyers Association (“CELA”), Equal Rights Advocates (“ERA”), Legal Aid at Work, and the California Work and Family Coalition Family, sponsors of the bill, state, “Family caregiver discrimination affects employees of every income level, race, gender, and industry. Working mothers and pregnant people, though, are most likely to experience this type of discrimination, with low wage earners and people of color disproportionately impacted. One study found mothers were 79% less likely to be recommended for hire, half as likely to be promoted, and offered an average of \$11,000 less in salary for the same position as similarly qualified non-mothers.

Caregiver discrimination even occurs at the hiring stage, where research shows that many employers are biased against job applicants who have temporarily stayed at home with their children. Research shows that adverse treatment continues through employment. For example, mothers of young children often report that they are chosen first for layoffs, while less-senior workers are chosen to stay on. They find they are passed over for promotion or have job offers rescinded when companies learn about their caregiving responsibilities. Fathers who take paternity leave are often criticized or stigmatized for taking time off work. And employees who have new eldercare responsibilities are suddenly hyper-scrutinized in a way they never were before.

AB 524 addresses family caregiver discrimination by simply prohibiting the disparate treatment of employees because of their family caregiver status. In other words, the bill prohibits employers from treating a worker adversely based on assumptions or stereotypes associated with their family caregiving. Specifically, the bill would add family caregiver to the list of protected characteristics (e.g., race, sexual orientation, marital status, religion, etc.) that are already prohibited bases of discrimination under the employment provisions of the Fair Employment and Housing Act (FEHA).”

⁴ “Litigation or Clarification? The Impact of Family Responsibilities Discrimination Laws,” The Center for Work life Law, University of California College of the Law, San Francisco, June 2021, p. 3.

⁵ *Ibid.*

⁶ “Clarification or Complaints? The Impact of Family Responsibilities Discrimination Laws on State Enforcement Agencies,” The Center for Work life Law, University of California College of the Law, San Francisco, June 2022, p. 3.

⁷ *Ibid.*

Arguments in Opposition

A coalition of employer organizations, including the California Chamber of Commerce, are opposed and state, “AB 524 creates a broad new protected class under FEHA: employees with family caregiver status. This broad group would include any employee who “contributes” to the care of any person of their choosing. This would encompass essentially every worker and creates an automatic basis for an individual in that new classification to challenge any adverse employment action, opening up a floodgate of litigation. Further, this new classification would be used to essentially require employers, including small businesses, to accommodate all caregiving needs beyond what is already required under existing law or else they may face a discrimination claim. Between litigation exposure and forced accommodations, AB 524 will increase the cost of doing business in California and the costs of goods and services.”

Prior Legislation

AB 1119 (Wicks) of 2021 would have expanded the anti-discrimination provisions of the Fair Employment and Housing Act 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. The bill was held in the Assembly Appropriations Committee.

SB 1383 (Jackson) Chapter 86, Statutes of 2020 expanded the California Family Rights Act (CFRA) to allow employees to use unpaid job protected leave to care for a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition.

SB 404 (Jackson) of 2013 would have added "familial status" to the protected categories of the employment provisions of the Fair Employment and Housing Act (FEHA). This measure died in the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

CA Work & Family Coalition (Co-Sponsor)
California Employment Lawyers Association (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Legal Aid At Work (Co-Sponsor)
AARP
American Association of University Women - California
Association of California Caregiver Resource Centers
BreastfeedLA
California Alliance for Retired Americans
California Breastfeeding Coalition
California Catholic Conference
California Coalition on Family Caregiving
California Commission on Aging
California Immigrant Policy Center
California Pan - Ethnic Health Network

California Pan-ethnic Health Network
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation, INC.
California Teachers Association
California Wic Association
California Women's Law Center
California Work & Family Coalition
Caring Across Generations
Center for Law and Social Policy (CLASP)
Child Care Law Center
Citizens for Choice
Colage
Consumer Attorneys of California
Disability Rights California
Family Caregiver Alliance (FCA)
Family Values @ Work
Family Violence Appellate Project
Friends Committee on Legislation of California
Futures Without Violence
Grace - End Child Poverty in California
Human Impact Partners
Jewish Center for Justice
Jtmw LLC
Justice in Aging
LA Best Babies Network
LA Raza Centro Legal
Los Angeles Alliance for A New Economy
Lutheran Office of Public Policy - California
Mujeres Unidas Y Activas
Naral Pro-choice California
National Association of Social Workers, California Chapter
National Council of Jewish Women Los Angeles
National Domestic Workers Alliance
National Multiple Sclerosis Society, Ms-can
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Public Counsel
Restaurant Opportunities Center of The Bay
Rising Communities (formerly Community Health Councils)
Santa Clara County Wage Theft Coalition
Seiu California
Tech Equity
Techequity Collaborative
Thai Community Development Center
The Restaurant Opportunity Center of The Bay
UFCW - Western States Council
Women's Foundation California
Worksafe

Oppose

Acclamation Insurance Management Services
Allied Managed Care
Associated General Contractors
Association of California Healthcare Districts
Auto Care Association
Brea Chamber of Commerce
Calchamber
California Apartment Association
California Association of Joint Powers Authorities
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Beer and Beverage Distributors
California Building Industry Association
California Business and Industrial Alliance
California Business Properties Association
California Chamber of Commerce
California Employment Law Council
California Farm Bureau
California Food Producers
California Grocers Association
California Hispanic Chambers of Commerce
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractor's Association
California Landscape Contractors Association
California Manufacturers and 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 (CALSHRM)
Carlsbad Chamber of Commerce
Cawa - Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Clovis Chamber of Commerce
Coalition for Small and Disabled Veteran Businesses
Coalition of California Chambers – Orange County
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
El Dorado Hills Chamber of Commerce
Encinitas Chamber of Commerce
Exeter Chamber of Commerce
Family Business Association of California
Family Winemakers of California

Flasher Barricade Association
Folsom Chamber of Commerce
Fontana 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
Glendora Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Kern County Hispanic Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
LA Verne Chamber of Commerce
Laguna Niguel Chamber of Commerce
Livermore Valley 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
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
North Orange County Chamber
North Orange County Chamber of Commerce
North San Diego Business Chamber
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Pleasanton Chamber of Commerce
Plumbing-heating-cooling Contractors Association of California
Public Risk Innovation, Solutions, and Management (PRISM)
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego East County Chamber of Commerce
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce

Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santa Rosa Metro Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
South County Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Car Wash Association
Wilmington Chamber of Commerce
Wine Institute
Yorba Linda Chamber of Commerce

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