

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Chris Holden, Chair  
AB 524 (Wicks) – As Amended March 15, 2023

Policy Committee:	Judiciary	Vote:	8 - 0
	Labor and Employment		5 - 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 prohibit employment discrimination due to family caregiver status.

This bill defines “family caregiver status” as a person who contributes to the care of one or more family members. A “family member” is defined as 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.

**FISCAL EFFECT:**

- 1) Costs of approximately \$482,000 in fiscal year (FY) 2024-25 and approximately \$478,000 annually thereafter to the Civil Rights Department (CRD) for three additional staff positions to investigate approximately 217 additional complaints per year involving an allegation of discrimination based on family caregiver status (General Fund (GF)). This estimate is based on the number of employment complaints investigated by CRD per year, as well as the rate of complaints filed in New York City, which prohibits employment discrimination using a definition similar to this bill. CRD notes some of these anticipated complaints would have been filed with CRD under existing bases, such as sex or disability, but this new additional basis for a complaint will make the investigation more complex, leading to increased workload. CRD must also update its complaint system, intake forms, regulations, educational materials, and webpages.
- 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 FEHA subject to a cause of action. It is unclear how many actions may be filed statewide, but the estimated workload cost of one hour of court time is \$1,000. If 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 staff and the TCTF may create a need for increased court funding from the GF to perform existing duties. The Governor’s 2023-24 state budget already proposes \$109.3 million in ongoing GF revenue to continue backfilling the TCTF for expected revenue declines.
- 3) Costs of an unknown, but potentially significant, amount to state agencies to the extent this bill makes human resources administration and workload more complex (GF). This bill may also increase employment litigation against state agencies.

**COMMENTS:**

1) **Purpose.** According to the author:

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.

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.

2) **Support and Opposition.** This bill is co-sponsored by the California Employment Lawyers Association, Equal Rights Advocates, Legal Aid at Work, and California Work and Family Coalition, which argue “employers assume caregivers will not be committed to their jobs, and therefore are not as valuable. These assumptions affect personnel decisions, including who gets hired, laid off, terminated,” and promoted. This bill is also supported by a large coalition of social justice and workers’ rights groups.

This bill is opposed by a large employer coalition led by the California Chamber of Commerce, which argues this bill “creates an automatic basis for an individual in that new classification to challenge any adverse employment action, opening up a floodgate of litigation.” Opponents also claim this bill will “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.”

3) **FEHA.** 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 caregiver status” to this list of protected characteristics, utilizing a definition of “family member” similar to that enacted by AB 1041, Chapter 748, Statutes of 2022.

4) **Designated Person.** AB 1041 expanded California Family Rights Act job protections and paid sick leave to an employee caring for a “designated person,” defined as any individual related by blood or whose association with the employee is equivalent of a family relationship. However, AB 1041 also specified the employee may identify the designated person at the time leave is requested and the employer may limit an employee to one designated person per 12-month period for family care and medical leave or paid sick days. Although these exact qualifications are not necessarily appropriate in an employment discrimination context, this bill does not further specify what it means to “contribute to the care” of a family member.

- 5) **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, unlike past iterations of the bill by the author, does *not* include provisions allowing an individual to request an accommodation from their employer to contribute to the care of a family member. As explained in the Assembly Judiciary Committee’s analysis of this bill:

That is to say that while an employer would be prohibited from refusing to hire a parent because they are a single parent and an employer is concerned that they would need to leave work early or otherwise tend to their child, this bill would not obligate an employer to engage in a dialogue as to whether they can provide that same employee with a modified schedule in order to allow the parent to pick their child up from school. In sum, this year’s bill is significantly narrower in scope than previous iterations.

- 6) **Related Legislation.** AB 518 (Wicks) expands Paid Family Leave benefits to a person who takes time off work to care for a seriously ill “designated person,” defined as any individual related by blood or whose association with the employee is equivalent of a family relationship. AB 518 is pending hearing in this committee.

SB 403 (Wahab) expands the list of protected characteristics under various laws, including FEHA, to prohibit discrimination on account of caste. SB 403 is pending hearing in the Senate Committee on Judiciary.

- 7) **Prior Legislation.** AB 2182 (Wicks), of the 2021-22 Legislative Session, was similar to this bill, but would have also made it an unlawful employment practice for an employer to fail to provide an effective accommodation for the employee’s caregiving obligation. AB 2182 was held on this committee’s suspense file.

AB 1119 (Wicks), of the 2021-22 Legislative Session, was substantially similar to AB 2182, except AB 1119 required an interactive process to identify the reasonable accommodation. AB 1119 was not heard by this committee after being referred to the suspense file.

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