

ASSEMBLY THIRD READING

AB 524 (Wicks)

As Amended May 18, 2023

Majority vote

SUMMARY

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

Major Provisions

- 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 previously identified as a "designated person," as specified.
- 4) States that nothing in the bill shall be interpreted as requiring employers to give employees preferred treatment because of family caregiving status, except as otherwise provided under local, state, or federal law, so long as family caregivers are treated the same as other employees with regard to all employer policies and practices.

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 one in six Americans working full-time or part-time report assisting with the care of an elderly or disabled family member, relative, or friend² and over one 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.

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.

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."

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)."

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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES

ASM JUDICIARY: 8-0-3

YES: Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, Robert Rivas

ABS, ABST OR NV: Essayli, Dixon, Sanchez

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Kalra, Haney, Ortega, Reyes, Ward

NO: Flora, Chen

ASM APPROPRIATIONS: 12-3-1

YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Weber, Ortega

NO: Megan Dahle, Dixon, Sanchez

ABS, ABST OR NV: Robert Rivas

UPDATED

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FN: 0000573