

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 524 (Wicks)
Version: May 18, 2023
Hearing Date: June 27, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Discrimination: family caregiver status

DIGEST

This bill prohibits employment discrimination on account of family caregiver status, as defined, and recognizes the opportunity to seek, obtain, and hold employment without discrimination because of family caregiver status as a civil right, as specified.

EXECUTIVE SUMMARY

The percentage of working adults who are caregivers – particularly to children or their parents – has increased significantly over the past decades, and will continue to as the population ages. Leaving the workforce is not an option for many, often because of the high cost of living and/or childcare and the lack of a social safety net to provide relief. The dual requirements of employment and caregivers hits women especially hard, as they disproportionately shoulder caretaking duties.

The author and sponsors report that, on top of the emotional and physical toll that can be associated with caregiving, caregivers also face discrimination in the workplace. Caregiver discrimination occurs when an employer refuses to hire or promote a person, or takes a negative employment action, because they assume the employee's caregiving obligations will prevent the employee from doing their job. This discrimination keeps qualified applicants and employees out of jobs they deserve on the basis of stereotypes, not facts about the actual person.

To prevent employers from engaging in discrimination against caregivers, this bill adds "family caregiver status" to the Fair Employment and Housing Act's (FEHA) list of protected characteristics for employment. "Family caregiver status" is defined a person who contributes to the care of one or more family members, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or a person previously identified as a recipient of care under existing family care leave law. The bill clarifies

that the addition of “caregiver status” does not require employers to give caregiver-employees any special treatment on the basis of their caregiver status; the author has agreed to amend this provision to further clarify that the bill does not impose any new obligations.

This bill is sponsored by the California Employment Lawyers Association, Equal Rights Advocates, Legal Aid at Work, and the California Work & Family Coalition, and is supported by over 50 organizations dedicated to families, children, and workplace equality. This bill is opposed by over 110 organizations, including Chambers of Commerce and trade associations. If this Committee passes this bill, it will be heard by the Senate Labor, Public Employment and Retirement Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Fair Employment and Housing Act (FEHA). (Gov. Code, tit. 2, div. 3, pt. 2.8, §§ 12900 et seq.)
- 2) Declares that:
 - a) It is the public policy of this State that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment 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, reproductive health decisionmaking, or military and veteran status.
 - b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.
 - c) The practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in housing accommodations is declared to be against public policy.
 - d) It is the purpose of FEHA to provide remedies that will eliminate these discriminatory practices, and FEHA shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this State. (Gov. Code, § 12920.)

- 3) Provides that the opportunity to seek, obtain, and hold employment without discrimination because 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, reproductive health decisionmaking, or veteran or military status is hereby recognized as and declared to be a civil right. (Gov. Code, § 12921.)
- 4) Establishes the Civil Rights Department (CRD) and the Civil Rights Council (Council) within the CRD to effectuate and enforce FEHA, as specified. (Gov. Code, §§ 12901-12907.)
- 5) Defines terms within FEHA, including:
 - a) Except in specified circumstances, “employee” does not include any individual employed by that person’s parent, spouse, or child or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.
 - b) “Employer” includes 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 subdivision of the state, and cities, but does not include a religious association or corporation not organized for private profit. (Gov. Code, § 12926.)
- 6) Makes it an unlawful employment practice in California, unless based upon a bona fide occupational qualification or, except where based on applicable security regulations established by the United States or this State, for employers and labor organizations to engage in discrimination and other negative employment actions on the basis of the characteristics listed in 2)(a). (Gov. Code, § 12940.)
- 7) Establishes the California Family Rights Act (CFRA) within FEHA, which requires covered employers to provide employees who satisfy certain criteria with unpaid, job-protected leave for specified family care and medical reasons. (Gov. Code, §§ 12945.1, 12945.2, 19702.3.)

This bill:

- 1) Adds “family caregiver status” to the list of characteristics protected from employment discrimination under FEHA.
- 2) Defines “family caregiver status” as a person who contributes to the care of one or more family members; a “family member” is a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or person previously identified as a “designated person” under Government Code section 12945.2 for purposes of taking family care leave.

- 3) Aligns the prohibition on discrimination on account of family caregiver status with the existing prohibition on account of marital status by providing that nothing in FEHA (1) affects the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the Council; or (2) prohibits bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.
- 4) States that the addition of “family caregiver status” to the list of protected characteristics in FEHA shall not be interpreted to require 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

1. Author’s comment

According to the author:

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.

2. Background on the prevalence of family caregiving

Tens of millions of Americans are caregivers. The United States Census Bureau found that over 63,000,000 Americans live with at least one child under 18;¹ according to the Bureau of Labor Statistics, 40.4 million Americans provide unpaid care to someone aged 65 years or older who needs help because of a condition relating to aging.² In both cases, women are disproportionately responsible for providing care: mothers with children are employed at a rate nearly 20 percent lower than fathers with children,³ and women are responsible for 58 percent of elder caregiving.⁴

The term “sandwich generation” has been coined to describe individuals—mostly women—who have caregiving obligations to both children and parents.⁵ The exact number of individuals with these dual caretaking obligations is unclear, but estimates put the number in the millions;⁶ one study found that about 12 percent of parents are caring for both at least one child under 18 while also providing unpaid care for an adult,⁷ and another found that 23 percent of parents have a parent age 65 or older and are either raising at least one child under 18 or providing financial support to an adult child.⁸ Sandwich generation members report making financial and career sacrifices to be there for their loved ones, including reducing working hours, increasing expenses, or leaving a job entirely.⁹

According to the author and sponsors, the prevalence of family caregiving is beginning to affect California’s employees in the form of discrimination on the basis of caregiver status. As the sponsors report:

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

¹ United States Census Bureau, *America’s Families and Living Arrangements: 2022: Adult* (A table series), Table A3, <https://www.census.gov/data/tables/2022/demo/families/cps-2022.html>. All links in this analysis are current as of June 23, 2023.

² United States Bureau of Labor Statistics, Economic News Release, *Unpaid Eldercare in the United States—2017-2018 Summary* (Nov. 22, 2019), <https://www.bls.gov/news.release/elcare.nr0.htm>.

³ United States Bureau of Labor Statistics, news Release, *Employment Characteristics of Families—2022* (Apr. 2023), available at <https://www.bls.gov/news.release/pdf/famee.pdf>.

⁴ United States Bureau of Labor Statistics, Economic News Release, *Unpaid Eldercare in the United States—2017-2018 Summary*, *supra*.

⁵ E.g., Chang, *The sandwich generation is changing. The stress remains*. Washington Post (Mar. 22, 2023), <https://www.washingtonpost.com/parenting/2023/03/22/caregivers-sandwich-generation/>.

⁶ Grose, *‘It’s Pretty Brutal’: The Sandwich Generation Pays a Price*, N.Y. Times (Feb. 18, 2020), <https://www.nytimes.com/2020/02/11/parenting/sandwich-generation-costs.html>.

⁷ Livingston, *More than one-in-ten U.S. parents are also caring for an adult*, Pew Research Center (Nov. 29, 2018), <https://www.pewresearch.org/short-reads/2018/11/29/more-than-one-in-ten-u-s-parents-are-also-caring-for-an-adult/>.

⁸ Horowitz, *More than half of Americans in their 40s are ‘sandwiched’ between an aging parent and their own children*, Pew Research Center (Apr. 8, 2022), <https://www.pewresearch.org/short-reads/2022/04/08/more-than-half-of-americans-in-their-40s-are-sandwiched-between-an-aging-parent-and-their-own-children/>.

⁹ *‘It’s Pretty Brutal’: The Sandwich Generation Pays a Price*, *supra*.

for their children). Most commonly, 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, hired, and promoted.

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 percent 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.

3. This bill prohibits employment discrimination against family caregivers

In order to ensure that employees who serve as caregivers do not experience workplace discrimination based on these responsibilities, this bill adds “family caregiver status” to the list of protected characteristics in the employment provisions of FEHA. With that addition, this bill would make it unlawful to refuse to hire, terminate, or take other adverse actions against an employee or potential employee because they are a caregiver. “Family caregiver status” is defined as a person who contributes to the care of one or more family members, including a spouse, child, parent, sibling grandparent, grandchild, domestic partner, or a person whom the caregiver has previously designated for purposes of taking family care leave. Under this bill, a person who suffered an adverse action as a result of being a caregiver could file a discrimination claim with CRD, and possibly a civil action, against the employer.

To be clear, this bill is targeted at ending discrimination based on stereotypes and misguided assumptions about how caretakers will act on the job; it does not create any new requirement for employers to accommodate caregivers once they have been hired, promoted, etc. As the opponents point out, existing law – including the CFRA – already

covers when and how caregivers may take leave once they are employed.¹⁰ This bill, by contrast, does not alter the existing landscape for how employees may take leave, and expressly states that the prohibition on discrimination on the basis of family caregiver status does not require employers to give employees who are caregivers preferential treatment. The bill's supporters agree; a coalition of support organizations confirms that "amendments have made it clear that AB 524 does not require employers to give any employee preferred treatment due to their caregiving status beyond what is already required by law."¹¹ The author has agreed to amendments to strengthen the provision stating that accommodations are not required. The amendments are set forth in Part 4.

The opponents also note that this bill is similar to two prior bills that generally addressed employment discrimination against caregivers. There are two key differences, however: both of the prior bills contained explicit requirements that employers give accommodations to employees for their caregiving needs,¹² while this bill, as noted above, expressly states that no such accommodations are necessary. AB 524 is thus considerably more modest in scope than the earlier bills which did not make it out of the Assembly.

4. Amendments

As discussed above, the author has agreed to amendments to further clarify that the bill does not require employers to give employees accommodations on the basis of caregiver status, while also clarifying that other laws that do mandate accommodations (family leave laws, pregnancy leave, etc.) remain intact. The language is below, with deletions in strikethrough and additions in bold/underline, and subject to any nonsubstantive changes the Office of Legislative Counsel may make:

At page 17, modify lines 14-19 to read:

¹⁰ Gov. Code, §§ 12945.1, 12945.2, 19702.3.

¹¹ Opponents cite *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, in which a court allowed a former employee to proceed to trial on an "associational disability" claim, to argue that this bill will also be interpreted to require employers to give accommodations for caregivers. *Castro-Ramirez* does not, as the letter suggests, involve a claim where the plaintiff simply "requested a schedule change"; instead, the plaintiff presented evidence that a new manager deliberately started scheduling him on work shifts that didn't allow him to get home in time to help with his ill son's dialysis treatments, after years of being assigned workable schedules, even though the business's customers specifically requested the employee on shifts that would work with his timing and there were no changes in the business that would have necessitated the schedule changes. (*Id.* at pp. 1033-1034.) The plaintiff was then terminated when he failed to drive a single shift, even though less-severe sanctions were available and he had positive customer feedback. (*Id.* at pp. 1042-1043.) Putting aside whether a case in which the plaintiff demonstrated a triable issue of fact on whether "plaintiff's association with his disabled son was a substantial motivating factor in [the manager's] decision to terminate him" is, in fact, a policy problem, the bill's clear statement that it does not require special treatment for family caregivers distinguishes the prohibition on discrimination on the basis of disability, which has no such limiting clause.

¹² See AB 2182 (Wicks, 2022); AB 1119 (Wicks, 2021).

(2) Nothing in this section relating to discrimination on account of family caregiver status shall be interpreted as creating any new obligation for an employer to provide special accommodations ~~requiring employers to give employees preferred treatment because of family caregiver 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.~~ This paragraph shall not be construed to diminish any right that is otherwise provided under this Part or any other local, state, or federal law.

5. Arguments in support

According to the California School Employees Association, AFL-CIO:

Family caregiver discrimination occurs when an employer takes a negative employment action against an employee based on their status as a caregiver. This can range from demoting an employee or refusing to hire someone based on their status as a family caregiver. CSEA represents 250,000 classified employees throughout the state. Most of our members are women of color, and women are often tasked with the role of caregiver in their family. We strongly believe no one should be denied job opportunities based on their status as a family caregiver. AB 524 would address this by prohibiting an employer from discriminating against an employee based on their status as a caregiver by adding family caregiver status to the list of protected characteristics under the employment provisions of the Fair Employment and Housing Act.

6. Arguments in opposition

According to the coalition of the bill's opponents:

AB 524 proposes to add any individual with "family caregiver status" as a new protected class under FEHA. That term is extremely broad. It is defined to include any worker who "contribut[es] to the care of one or more family members." A "family member" is not limited to an actual family member. Rather, it also includes any person who is designated by the employee. This could include a neighbor or an employee's child's friend. Every employee could arguably fall into the category of a family caregiver. Proponents of AB 524 claim that adding family caregiver status to FEHA is a simply a "clarification" of existing laws, but that is not true. AB 524 is a significant expansion of FEHA and has been rejected by this Legislature for the last two years.

Because whether an employee contributes to the care of another is a subjective determination, the employer has no ability to dispute an employee designating themselves as having family caregiver status. Any dispute would open the employer up to costly litigation. Further, adding this broad, new classification to

the list under FEHA would limit 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 caregiver status." 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 risking potential litigation under FEHA for discrimination based on family caregiver status. This will significantly limit an employer's ability to address discipline issues in the workplace, maintain stability, and eradicate any issues without costly litigation.

SUPPORT

California Employment Lawyers Association (co-sponsor)

California Work & Family Coalition (co-sponsor)

Equal Rights Advocates (co-sponsor)

Legal Aid at Work (co-sponsor)

AARP California

ACCESS Reproductive Justice

Breastfeed LA

California Breastfeeding Coalition

California Calls

California Coalition on Family Caregiving

California Immigrant Policy Center

California Pan-Ethnic Health Network

California Partnership to End Domestic Violence

California School Employees Association, AFL-CIO

California Teachers Association

California WIC Association

California Women Lawyers

California Women's Law Center

Caring Across Generations

Center for Law and Social Policy

Child Care Law Center

Citizens for Choice

COLAGE

Consumer Attorneys of California

Family Caregiver Alliance

Family Values @ Work

Friends Committee on Legislation of California

Futures Without Violence

GRACE - End Child Poverty in CA

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
Mujeres Unidas y Activas
NARAL Pro-Choice California
National Association of Social Workers – California Chapter
National Council of Jewish Women CA
National Council of Jewish Women Los Angeles
National Domestic Workers Alliance
National Multiple Sclerosis Society
Orange County Equality Coalition
Our Family Coalition
Parent Voices, California
Public Counsel
Rising Communities
Santa Clara County Wage Theft Coalition
TechEquity Collaborative
Thai Community Development Center
The Restaurant Opportunity Center of the Bay
UFCW Western States Council
Women’s Foundation California
Worksafe

OPPOSITION

Acclimation Insurance Management Services
Allied Managed Care
Associated General Contractors
Association of California Healthcare Districts
Auto Care Association
Brea Chamber of Commerce
California Apartment Association
California Association of Joint Powers Authorities
California Association of Sheet Metal and Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Bankers Association
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 Fam Bureau
California Food Producers
California Grocers Association
California Hispanic Chambers of Commerce
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California Manufacturers and Technology Association
California New Car Dealers Association
California Railroads
California Rental Housing Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management
Carlsbad Chamber of Commerce
CAWA
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Clovis Chamber of Commerce
Coalition of California Chambers
Coalition of Small and Disabled Veteran Businesses
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 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 Cañada 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 Businesses
Newport Beach Chamber of Commerce
North Orange County Chamber
North Side San Diego Business Chamber
Oceanside Chamber of Commerce
Official Police Garages 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
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego Regional East County Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Marisa 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 Carwash Association
Western Growers Association
Wilmington Chambers of Commerce
Wine Institute
Yorba Linda Chamber of Commerce

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2182 (Wicks, 2022) was similar to this bill in that it would have prohibited employment discrimination on the basis of “family responsibilities,” which was similar to family caregiver status; but also would have required an employer to make accommodations for persons with “family responsibilities” to tend to obligations arising from specified circumstances involving those responsibilities. AB 2182 died in the Assembly Appropriations Committee.

AB 1041 (Wicks, Ch. 748, Stats. 2022) expanded the list of individuals for whom an employee can take leave under the CFRA and the Healthy Workplaces, Healthy Families Act of 2014 to include a “designated person” by the employee.

AB 1119 (Wicks, 2021) was substantively similar to AB 2182. AB 1119 died in the Assembly Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 47, Noes 15)
Assembly Appropriations Committee (Ayes 12, Noes 3)
Assembly Labor and Employment Committee (Ayes 5, Noes 2)
Assembly Judiciary Committee (Ayes 8, Noes 0)
