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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**  
**Senator Dave Cortese, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 524 **Hearing Date:** July 12, 2023  
**Author:** Wicks  
**Version:** June 29, 2023  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Alma Perez-Schwab

**SUBJECT:** Discrimination: family caregiver status

**KEY ISSUE**

Should the Legislature prohibit employment discrimination because of *family caregiver status* by expanding the protected characteristics listed in the anti-discrimination provisions of the Fair Employment and Housing Act (FEHA) to include “family caregiver status,” as defined?

**ANALYSIS**

**Existing law:**

- 1) Establishes the Fair Employment and Housing Act (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)
- 2) Makes it an unlawful employment practice, under FEHA, for an employer to refuse to hire, discharge from employment, or otherwise discriminate against a person in compensation or in the terms, conditions, or privileges of employment, on account of that person’s race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, reproductive health decisionmaking, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. (Government Code §12940)
- 3) Makes it unlawful, under the California Family Rights Act (CFRA), for an employer to refuse to grant a request by an employer with more than 12 months service to take up to 12 weeks of paid or unpaid leave in any 12-month period for family care and medical leave, as defined. Defines “family and medical leave,” among other individuals, as leave to care for a “designated person.” (Government Code §12945.2)
- 4) Defines “designated person” to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave. (Government Code §12945.2)
- 5) 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. (Government Code §12930)

- 6) 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)

**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 individual previously identified as a “designated person” under Government Code Section 12945.2.
- 4) Provides that nothing in these provisions relating to discrimination on account of family caregiver status shall be interpreted as creating any new obligation for an employer to provide special accommodations because of family caregiver status. Specifies that 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.

## COMMENTS

### 1. Background: Family Caregiving Statistics

Between the cost of living in California and high inflation, many working families are struggling. A world where most two-parent households could afford to have one parent in the workforce while the other cared for children or other family members is a concept of the past. Balancing the demands of a career while caring for family members is especially challenging in a post COVID-19 world where technology and employer demands have created a 24/7 work mentality.

According to the U.S. Department of Labor, roughly 60 percent of two-parent households with children under age 18 have both parents working<sup>1</sup> - a reality that has significant impacts on both employees and their employers. Moreover, 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 friend<sup>2</sup> and over 1 in 12 employed adults are caring for both children and elderly

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

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

or disabled adults.<sup>3</sup> Most employees will have caregiving responsibilities at some point in their professional lives with women being disproportionately responsible for providing care: mothers with children are employed at a rate nearly 20 percent lower than fathers with children,<sup>4</sup> and women are responsible for 58 percent of elder caregiving.<sup>5</sup>

The Senate Judiciary Committee analysis writes, “The term “sandwich generation” has been coined to describe individuals—mostly women—who have caregiving obligations to both children and parents.<sup>6</sup> The exact number of individuals with these dual caretaking obligations is unclear, but estimates put the number in the millions;<sup>7</sup> 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,<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

## 2. Protections in Existing Law:

As noted under existing law above, California’s Fair Employment and Housing Act (FEHA) 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. FEHA also makes it an unlawful employment practice for an employer to refuse to hire, discharge from employment, or otherwise discriminate against a person in compensation or in the terms, conditions, or privileges of employment, on account of these specified characteristics.

As noted by the author, “Family caregiver discrimination occurs when an employer takes a negative employment action against an employee based on their status as a caregiver. Employment actions—like termination, refusal to hire, or demotion—may be based on biases about how workers who are caregivers will or should act, without regard to the workers’ actual performances or preferences. Mothers and fathers of young children, pregnant and breastfeeding people, and employees with aging parents or sick spouses or partners may encounter caregiver discrimination.”

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<sup>3</sup> Pew Research Center, “More than one-in-ten U.S. parents are also caring for an adult,” available at [https://www.pewresearch.org/wp-content/uploads/2018/11/FT\\_18.11.29\\_MultiGenCare\\_Tables\\_pdf.pdf](https://www.pewresearch.org/wp-content/uploads/2018/11/FT_18.11.29_MultiGenCare_Tables_pdf.pdf)

<sup>4</sup> 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>.

<sup>5</sup> United States Bureau of Labor Statistics, Economic News Release, Unpaid Eldercare in the United States—2017-2018 Summary, *supra*.

<sup>6</sup> 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/>.

<sup>7</sup> 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>.

<sup>8</sup> 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/>.

<sup>9</sup> 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/>.

<sup>10</sup> ‘It’s Pretty Brutal’: *The Sandwich Generation Pays a Price*, *supra*.

There are situations where our existing anti-discrimination provisions of law could potentially protect someone experiencing this type of “family caregiving” discrimination. For example, a mother who is passed up for an earned promotion because of perceived limitations on her schedule due to caregiving could potentially file a claim for discrimination due to gender. However, according to the sponsors, cases are not always clear and nothing in existing law explicitly addresses discrimination for caregiving. Sponsors shared, as an example, the story of a firefighter father who got divorced and took custody of his children. Subsequently, he was passed up for a promotion and felt that it was an act of discrimination because of the perception that his parental duties would interfere with his work.

This bill attempts to fill this gap by ensuring that employees who serve as caregivers do not experience discrimination in the workplace based solely on these responsibilities. By adding “family caregiver status” to FEHA, 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. It is important to note that simply being a member of a class does not create a claim; the employee would have to prove the suffered adverse action when submitting a claim (with the Civil Rights Department) or pursuing a civil action against an employer.

Recent amendments to the bill, taken in Senate Judiciary Committee when the bill was heard on June 29, 2023, clarify that nothing in these provisions (adding anti-discrimination protections on account of family caregiver status to FEHA) shall be interpreted as creating any new obligation for an employer to provide special accommodations because of family caregiver status. These amendments also specify that this clarification shall not be construed to diminish any right that is otherwise provided under FEHA or any other local, state, or federal law. As noted by the Senate Judiciary Committee analysis, “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.”

### **3. Need for this bill?**

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.”

#### 4. Proponent Arguments:

According to the sponsors of the measure, “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 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.”

They note that, “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.”

Furthermore, they argue that, “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.”

Additionally, they write, “Recent amendments clarify that nothing in this section shall be interpreted as creating any new obligation for an employer to provide “special accommodations” because of family caregiving status, except as otherwise provided under local, state, or federal law. The term “special accommodations” and the savings clause in this provision are used to avoid any conflation with or negative impact on existing laws governing an employee’s right to reasonable accommodations under the Fair Employment and Housing Act (FEHA). For example, in *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, the Second District Court of Appeal stated that Section 12940(m) of the FEHA, “may reasonably be interpreted to require accommodation based on the employee’s association with a ...disabled person,”<sup>11</sup> Thus, in some instances, the FEHA may already require employers to provide family caregivers with accommodations. AB 524 therefore clarifies that while employers may not have any new obligation to provide special accommodations based on family caregiver status, that does not diminish an employee’s existing right to an accommodation under the FEHA or any other local, state, or federal law.”

#### 5. Opponent Arguments:

The measure is opposed by a coalition of employer associations, including the California Chamber of Commerce, who argues that the bill creates a broad new protected class under FEHA. Specifically, they argue that, “family caregiver status” is extremely broad and includes, “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.”

Additionally, they argue, “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.””

Furthermore, they believe that this bill creates a de facto accommodation requirement, arguing, “if an employee requests a schedule change or time off that is denied and they subsequently violate an attendance policy or are terminated for refusing to work a different schedule, they will surely sue alleging discrimination.” They cite, as an example, a court case (*Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016)) in which the plaintiff had requested a schedule change due to his son’s disability. “The schedule change was not approved and the plaintiff refused to work the other schedule, resulting in termination. On appeal, the plaintiff did not raise whether he was entitled to a reasonable accommodation. Instead, his claim was that he had been discriminated against. The court agreed that the discrimination claim could move forward even if there was no statutory duty to accommodate because the accommodation issue was “significantly intertwined” with the prohibition against discrimination. (*Id.* at 1038-39, 1046)” They argue that trial attorneys will surely read this bill as requiring the same outcome in which rejecting a caregiver’s accommodation request is discriminatory even if there is no explicit legal duty to provide an accommodation.

Additionally, opponents argue that this bill exposes employers, including small businesses, to costly litigation due to its private right of action. They note that, “liability includes compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees.” Lastly, the coalition argues that if the Legislature finds existing leave laws as being insufficient, rather than imposing new burdens on employers it should provide more flexible work options to workers by revising California’s overly rigid wage and hour laws that prohibit workplace flexibility. They argue, “Between litigation exposure and forced accommodations, AB 524 will increase the cost of doing business in California and the costs of goods and services.”

## **6. Double Referral:**

This bill was double referred to Senate Judiciary and Labor, Public Employment and Retirement Committees.

## **7. Prior Legislation:**

AB 2182 (Wicks, 2022) was similar to this bill in that it would have expanded the list of protected characteristics under FEHA to include “family responsibilities,” as defined, 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. The bill was held in the Assembly Appropriations Committee.

AB 1041 (Wicks, Chapter 748, Statutes of 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 substantially similar to AB 2182 and included both the FEHA anti-discrimination provisions to include an applicant or employee’s family responsibilities and would have required 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 404 (Jackson, 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.

### **SUPPORT**

California Employment Lawyers Association (Co-Sponsor)

CA Work & Family Coalition (Co-Sponsor)

Equal Rights Advocates (Co-Sponsor)

Legal Aid at Work (Co-Sponsor)

AARP

Access Reproductive Justice

Alzheimer's Greater Los Angeles

Alzheimer's Orange County

Alzheimer's San Diego

American Association of University Women - California

Association of California Caregiver Resource Centers

Association of Regional Center Agencies

BreastfeedLA

California Alliance for Retired Americans

California Breastfeeding Coalition

California Calls

California Catholic Conference

California Coalition on Family Caregiving

California Commission on Aging

California Immigrant Policy Center

California Pan - Ethnic Health Network

California Partnership to End Domestic Violence

California Rural Legal Assistance Foundation, INC.

California School Employees Association

California Teachers Association

California WIC Association

California Women Lawyers

California Women's Law Center

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  
Lawyers' Committee for Civil Rights of The San Francisco Bay Area  
Los Angeles Alliance for A New Economy  
Lutheran Office of Public Policy - California  
Mujeres Unidas Y Activas  
NARAL Pro-choice California  
National Alliance on Mental Illness (NAMI-CA)  
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  
Restaurant Opportunities Center of The Bay  
Rising Communities (formerly Community Health Councils)  
Santa Clara County Wage Theft Coalition  
SEIU California  
TechEquity Collaborative  
Thai Community Development Center  
The Restaurant Opportunity Center of The Bay  
United Food and Commercial Workers, Western States Council  
Women's Foundation California  
Worksafe

**OPPOSITION**

Acclamation 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 & 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 Farm 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 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 of California Chambers – Orange County  
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 Business (NFIB)  
Newport Beach Chamber of Commerce  
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  
Western Growers Association  
Wilmington Chamber of Commerce  
Wine Institute  
Yorba Linda Chamber of Commerce

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