
THIRD READING

Bill No: AB 524
Author: Wicks (D)
Amended: 9/8/23 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-2, 6/27/23
AYES: Umberg, Allen, Ashby, Durazo, Laird, Stern, Wiener
NOES: Wilk, Niello
NO VOTE RECORDED: Caballero, Min

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 7/12/23
AYES: Cortese, Durazo, Laird, Smallwood-Cuevas
NOES: Wilk

SENATE APPROPRIATIONS COMMITTEE: 5-2, 9/1/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

ASSEMBLY FLOOR: 47-15, 6/1/23 - See last page for vote

SUBJECT: Discrimination: family caregiver status

SOURCE: California Employment Lawyers Association
California Work & Family Coalition
Equal Rights Advocates
Legal Aid at Work

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.

Senate Floor Amendments of 9/8/23 clarify that a family caregiver is someone who “provides direct care” to a specified family member (rather than “contributing to the care of” a family member); clarify that caregiver status for persons previously

designated under the state's family leave act is available only to existing employees; add, to the exemption stating that the bill doesn't require any new obligation to provide accommodations includes no new obligations "with respect to absenteeism, benefits, leave, scheduling, or work performance; and add chaptering-out amendments to avoid a conflict with SB 403 (Wahab, 2023).

ANALYSIS:

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 being a person who provides direct care to a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or, with respect to an existing employee, any individual previously identified by

the employee as a “designated person” under existing family care and medical leave laws, as specified.

- 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 create any new obligation for an employer to provide special accommodations because of family caregiver status, including with respect to absenteeism, benefits, leave, scheduling, or work performance; this provision does not diminish any right that is otherwise provided under FEHA or other local, state, or federal law.
- 5) Add chaptering-out amendments to avoid a conflict with SB 403 (Wahab, 2023).

Comments

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 FEHA’s list of protected characteristics for employment. “Family caregiver status” is defined as being a person who provides

direct care to a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or, for an existing employee, any individual who was previously identified as a “designated person” under existing family care and medical leave laws.¹ This bill also 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, except where already required by local, state, or federal law.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- CRD would incur General Fund costs of \$482,000 in 2024-25, and \$478,000 annually thereafter, to implement the provisions of this bill.
- Unknown court workload cost pressures to the extent this bill creates a new protection under FEHA subject to a cause of action. (Trial Court Trust Fund, General Fund).
- To the extent this bill increases the administrative workload of human resources administration, this bill could result in unknown, potentially significant costs to state agencies (General Fund and special funds).

SUPPORT: (Verified 9/11/23)

California Employment Lawyers Association (co-source)

California Work & Family Coalition (co-source)

Equal Rights Advocates (co-source)

Legal Aid at Work (co-source)

AARP California

ACCESS Reproductive Justice

Alzheimer’s Los Angeles

Alzheimer’s Orange County

Alzheimer’s San Diego

American Association of University Women

Asian Americans for Community Involvement

Association of Regional Center Agencies

Breastfeed LA

California Breastfeeding Coalition

California Calls

California Coalition on Family Caregiving

¹ See Gov. Code, § 12945.2.

California Commission on Aging
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
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
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: (Verified 9/11/23)

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 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 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

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.

ARGUMENTS IN OPPOSITION: According to the coalition of this 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.

ASSEMBLY FLOOR: 47-15, 6/1/23

AYES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Garcia, Gipson, Haney, Hart, Holden, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Reyes, Luz Rivas, Robert Rivas, Santiago, Schiavo, Ting, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon

NOES: Alanis, Chen, Davies, Dixon, Flora, Vince Fong, Gallagher, Hoover, Lackey, Jim Patterson, Joe Patterson, Sanchez, Ta, Waldron, Wallis

NO VOTE RECORDED: Bains, Boerner, Megan Dahle, Essayli, Gabriel, Grayson, Irwin, Mathis, Stephanie Nguyen, Pacheco, Petrie-Norris, Quirk-Silva, Ramos, Rodriguez, Blanca Rubio, Soria, Valencia, Villapudua

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
9/11/23 12:47:44

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