

GOVERNOR'S VETO
AB 524 (Wicks)
As Enrolled September 18, 2023
2/3 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.

Senate Amendments

- 1) Revise the definition of "family caregiver status" to mean 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," as specified.
- 2) Clarify that the bill's provisions shall not be interpreted as creating 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 statement shall not be construed, however, to diminish any right otherwise provided under this part or other law.
- 3) Add language to address chaptering out with SB 403 (Wahab) of the current legislative session.

Governor's Veto Message

This bill would add "family caregiver status" as a characteristic protected under the Fair Employment and Housing Act's employment provisions.

During my tenure as Governor I have consistently advanced policies to help parents and families, including expanding paid family leave and increasing the state's investment in childcare. While I appreciate the intent of this bill, I am concerned about the large burden it will place on employers, particularly small businesses, especially given the ambiguous nature of the language.

Although the bill does not require employers to provide "special accommodations" based on "family caregiver status," it is not clear what types of acts would constitute unlawful discrimination and what types of acts would be lawful denials of "special accommodations." Given this ambiguity, this bill would be difficult to implement and lead to costly litigation for employers in California.

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

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>.

Furthermore, caregiving goes beyond taking care of children as 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 friend² and over 1 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.

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,

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.

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 Senate Appropriations Committee:

- 1) The Civil Rights Department (CRD) would incur General Fund costs of \$482,000 in 2024-25, and \$478,000 annually thereafter, to implement the provisions of the bill.
- 2) 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). See Staff Comments for additional details.
- 3) 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).

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

ASSEMBLY FLOOR: 47-15-18

YES: 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
NO: Alanis, Chen, Davies, Dixon, Flora, Vince Fong, Gallagher, Hoover, Lackey, Jim Patterson, Joe Patterson, Sanchez, Ta, Waldron, Wallis
ABS, ABST OR NV: Bains, Boerner, Megan Dahle, Essayli, Gabriel, Grayson, Irwin, Mathis, Stephanie Nguyen, Pacheco, Petrie-Norris, Quirk-Silva, Ramos, Rodriguez, Blanca Rubio, Soria, Valencia, Villapudua

SENATE FLOOR: 26-8-6

YES: Allen, Ashby, Atkins, Becker, Blakespear, Bradford, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hurtado, Laird, Limón, McGuire, Menjivar, Newman, Padilla, Portantino, Rubio, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener
NO: Alvarado-Gil, Dahle, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk
ABS, ABST OR NV: Archuleta, Caballero, Glazer, Grove, Min, Roth

ASSEMBLY FLOOR: 49-17-14

YES: Addis, Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Juan Carrillo, Wendy Carrillo, Cervantes, Connolly, Mike Fong, Friedman, Gabriel, Garcia, Gipson, Haney, Hart, Holden, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Muratsuchi, Ortega, Papan, Pellerin, Quirk-Silva, Rendon, Reyes, Luz Rivas, Santiago, Schiavo, Ting, Ward, Weber, Wicks, Wilson, Wood, Zbur, Robert Rivas
NO: Alanis, Chen, Megan Dahle, Davies, Dixon, Flora, Vince Fong, Gallagher, Hoover, Lackey, Mathis, Jim Patterson, Joe Patterson, Sanchez, Ta, Waldron, Wallis
ABS, ABST OR NV: Bains, Boerner, Essayli, Grayson, Irwin, Stephanie Nguyen, Pacheco, Petrie-Norris, Ramos, Rodriguez, Blanca Rubio, Soria, Valencia, Villapudua

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