

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kara, Chair

AB 1041 (Wicks) – As Introduced February 18, 2021

SUBJECT: Leave

SUMMARY: For purposes of the California Family Rights Act (CFRA), the Healthy Workplaces, Healthy Families Act of 2014, and the Paid Family Leave program (PFL) expands the persons that may be cared for by an employee to include an individual related by blood or whose close association with the employee is the equivalent of a family relationship.

EXISTING LAW:

- 1) Establishes the CFRA that makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for the following reasons:
 - a) To care for a child born to, adopted by, or placed for foster care with the employee.
 - b) To care for the employee's child, parent, grandparent, grandchild, siblings, spouse, or domestic partner who has a serious health condition, as defined.
 - c) To address an employee's own serious health condition rendering them unable to perform the functions of their job.
- 2) Defines employer as any person that directly employs five or more employees including, the state, and any political or civil subdivision of the state and cities.
- 3) Defines eligible employee as one that has more than 12 months of service with the employer and at least 1,250 hours of service with the employer within the last 12 months.
- 4) Allows an employer to require that an employee's request for leave to take care of a family member, as specified, to be supported by a certification issued by the health care provider of the individual requiring care.
- 5) Establishes the Healthy Workplaces, Healthy Families Act of 2014 that requires an employer to provide an employee as specified, a minimum of 24 hours or three days of paid sick leave per year to be used for the following reasons:
 - a) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
 - b) For an employee who is a victim of domestic violence, sexual assault, or stalking to seek medical attention for injuries, obtain victim services, mental health service, and participate in safety planning.
- 6) Defines employer as any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

- 7) Exempts employees that are covered by collective bargaining agreement and certain employees of air carriers from coverage.
- 8) Permits an employee to use accrued paid sick days beginning on the 90th day of employment.
- 9) Defines family member to mean any of the following:
 - a) A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.
 - b) A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
 - c) A spouse or registered domestic partner.
 - d) A parent, grandchild, or sibling.
- 10) Establishes the PFL program within the state disability insurance program for the provision of wage replacement benefits for up to eight weeks within a 12-month period to workers for the following reasons:
 - a) To care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner.
 - b) To bond with a new child entering the family by birth, adoption, or foster care placement.
 - c) To participate in a qualifying event because of a spouse, registered domestic partner, parent, or child's military deployment to a foreign country.

FISCAL EFFECT: Unknown

COMMENTS: Note: This bill is double referred to the Assembly Insurance Committee upon passage out of this Committee.

According to an article by the Center for American Progress, an analysis of United States Census Bureau data in 2020 shows that just 18.4 percent of American households follow the traditional nuclear family structure. "Instead, millions of people rely on chosen family—individuals who form close bonds akin to those traditionally thought to occur in relationships with blood or legal ties—for caregiving support. Chosen families are particularly meaningful for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals, many of whom have strained relationships with blood relatives or have close partners to whom they are not legally married or in a registered domestic partnership."

Additionally, according to a U.S. Census Bureau report, "multigenerational households may be more likely to reside in areas where new immigrants live with their relatives, and in areas where housing shortages or high costs force families to double up their living arrangements.

The states in the West with higher than the national level of multigenerational households include Arizona, California, Hawaii, Nevada, and New Mexico, with a range from 6.2 percent to 11.1 percent.”¹

According to the author, “Only a minority of paid family leave claims are to care for a seriously ill family member; the overwhelming majority of paid family leave claims in California, are for bonding with a child. When paid family leave is used for care of a seriously ill family member, only a small percentage of these claims are used to care for family other than a child, parent, or spouse. In 2018, only 0.481% of all California’s paid family leave claims filed were to care for relatives outside these categories.”

The author further states that this bill “will expand the use of paid family leave to chosen family and create an important right for workers with non-nuclear family structures. It is time for California to join these other states (like Oregon, Connecticut, New Jersey and Colorado), ensuring that all Californians have the right to be there for their loved ones when it matters most, regardless of blood or legal relationship.”

Arguments in Support

The American Civil Liberties Union of California (ACLU), in support of this bill, argues “Due to cultural, economic, and social forces, many households today depart from the nuclear family model of married couple and their biological children. Instead, they increasingly include close loved ones who are not biologically or legally related. Yet, California’s family leave laws typically reflect the outdated nuclear family model, allowing workers time off to care only for certain narrowly defined family members. Aging adults also rely on a wide network of relationships for caregiving that are not recognized by current law. Many caregivers are partners, neighbors, or friends. Among Americans who provide care to an adult age 65 or older, more than 23 percent provide care for a friend, neighbor, or other unrelated person.”

Arguments in Opposition

A coalition of employer organizations, including the California Chamber of Commerce, argue in opposition that “the existing provisions of CFRA are already challenging, confusing, and burdensome, and small employers who are struggling as a result of this pandemic are overwhelmed by the current law.” The California Chamber of Commerce further states that “[This bill], provides no definition of who qualifies, leaving it up to the employee to self-identify – which means essentially anyone could qualify. Under CFRA if an employer were to question the status of the relationship of the person for whom the employee was taking the leave, this could be seen as interfering or discouraging the employee from taking the leave, exposing the employer to litigation.”

Prior and Related Legislation

AB 1119 (Wicks) of 2021 would expand the list of protected characteristics under the California Fair Employment and Housing Act (FEHA) to include “family responsibilities,” defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient. AB 1119 is currently awaiting a hearing in this committee.

¹ Lofquist, Daphne. *Multigenerational Households: 2009–2011*. U.S. Census Bureau, October, 2012.

SB 1383 (Jackson) Chapter 24, Statutes of 2019 extended the duration of Paid Family Leave benefits from six weeks to eight weeks.

SB 1123 (Jackson) Chapter 849, Statutes of 2018 expanded the paid family leave program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces.

REGISTERED SUPPORT / OPPOSITION:

Support

California Employment Lawyers Association (Co-Sponsor)
California Work and Family Coalition (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Legal Aid At Work (Co-Sponsor)
AARP
Access Reproductive Justice
American Civil Liberties Union/Northern/Southern California/San Diego and Imperial Counties
Api Equality-la
Association of California Caregiver Resource Centers
Breastfeedla
California Alliance for Retired Americans
California Labor Federation
California Nurse-midwives Association
California Pan - Ethnic Health Network
California Partnership to End Domestic Violence
California Women's Law Center
Child Care Law Center
Consumer Attorneys of California
Empowering Pacific Islander Communities
Equality California
Family Caregiver Alliance
Friends Committee on Legislation of California
Human Impact Partners
If/when/how: Lawyering for Reproductive Justice
Jewish Center for Justice
LA Best Babies Network
LAANE
Naral Pro-choice California
National Council of Jewish Women Los Angeles
Orange County Equality Coalition
Organization of SMUD Employees
Our Family Coalition
Prevention Institute
Public Counsel
Religious Coalition for Reproductive Choice California
Restaurant Opportunities Centers of California

Voices for Progress
Working Partnerships USA

Oppose

Associated General Contractors
Brea Chamber of Commerce
California Beer and Beverage Distributors
California Building Industry Association
California Chamber of Commerce
California Farm Bureau Federation
California Food Producers
California Landscape Contractor's Association
California Restaurant Association
California Retailers Association
California Special Districts Association
California State Association of Counties
California State Council of The Society for Human Resource Management (CALSHRM)
Carlsbad Chamber of Commerce
El Dorado Hills Chamber of Commerce
Family Winemakers of California
Folsom Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Housing Contractors of California
Long Beach Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
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
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Public Risk Innovation, Solutions, and Management
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce & Visitors Bureau
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Santa Rosa Metro Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce

Tulare Chamber of Commerce
Western Car Wash Association

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