

SENATE THIRD READING
SB 1383 (Jackson)
As Amended June 29, 2020
Majority vote

SUMMARY:

Expands the California Family Rights Act (CFRA) to allow employees to use unpaid job protected leave to care for a domestic partner, grandparent, grandchild, sibling, or parent-in-law who has a serious health condition.

Major Provisions

- 1) Expands CFRA to cover domestic partners, grandparents, grandchildren, siblings, and parents-in-law.
- 2) Expands the definition of a "child" to include a child of a domestic partner.
- 3) Provides that the term "domestic partner" shall have the same meaning as defined in Family Code Section 297.
- 4) Defines "employer" as any person who directly employs five or more persons to perform services for a wage or salary or the state, and any political or civil subdivision of the state and cities.
- 5) Defines "grandchild" as a child of the employee's child.
- 6) Defines "grandparent" as a parent of the employee's parent.
- 7) Defines "parent-in-law" as the parent of a spouse or domestic partner.
- 8) Defines "sibling" as a person related to another person by blood, adoption, or affinity through a common legal or biological parent.
- 9) Expands "family care and medical leave" to include:
 - a) Leave to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition.
 - b) Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States, as specified in Unemployment Insurance Code Section 3302.2.
- 10) Repeals the provisions of the New Parent Leave Act.

COMMENTS:

California's Paid Family Leave Program (PFL) provides benefits to individuals who need time to take off to care for a seriously ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner or to bond with a new child. Eligible individuals may receive wage replacement benefits for eight weeks in the amount of approximately 60% to 70%

of their weekly salary. The program is funded by worker contributions via the State Disability Insurance tax. PFL does not include job protections. Thus, for example, an employee who has a seriously ill grandparent may be eligible for PFL to take care of that grandparent but may lose their job if they take PFL because, currently, CFRA, unpaid job protected leave, does not apply to leave to care for a seriously ill grandparent.

A recent study of PFL generated several findings:

- 1) Approximately 90% of all PFL claims are to bond with a new child.
- 2) Employment of new mothers increased following the introduction of PFL.
- 3) Employees from large employers, those employee 250 or more employees, have greater use of PFL than employers employing 25 or fewer employees.
- 4) Employers with 25 or fewer employees had employees use PFL in 6% of all quarters, or roughly once every four years.
- 5) PFL does not appear to increase the prevalence of businesses ceasing operations.
- 6) Small employers experience a reduction in labor costs when workers use PFL. Employers with 25 or fewer employees experience, on average, a 14% decrease in per worker labor costs when workers use PFL.¹

In 2019, Governor Newsom signed SB 83 (Budget and Fiscal Review Committee), Chapter 24, which extended PFL benefits from six to eight weeks, effective July 1, 2020. Governor Newsom also convened a Paid Family Leave Task Force, consisting of members of the business, legal, policy, science, and early learning communities, intended to provide policy recommendations to expand California's Paid Family Leave Program. This bill is the result of a recommendation of this task force.

According to the Author:

"In 2004, California implemented the nation's first Paid Family Leave Program, an entirely worker-funded program paid for through paycheck deductions funneled through the State Disability Insurance program. But because there was no job protection directly associated with the program, Californians have had to rely on separate and inadequate job protection laws, primarily the California Family Rights Act, to ensure they can take the Paid Family Leave benefits they pay for without risking their economic security and livelihoods while doing so.

These job protection laws have long been inadequate because they exclude millions of Californians because of their employer size. Currently, 40 percent of California workers are at risk of losing their jobs if they take leave to care for a seriously ill loved one or themselves because their employer is too small. This means that employees are risking their economic livelihood at precisely the time they are dealing with the strain of caring for a newborn or a parent with cancer. Once a leader on family leave, California has now fallen behind. Other states, including New York, Massachusetts, Connecticut, Rhode Island and Oregon have enacted paid family leave laws that provide job protection for all workers, regardless of employer size.

¹ Bay Area Council Economic Institute, "Evaluation of the California Paid Family Leave Program" (June 19, 2020) p. 5 <http://www.bayareaeconomy.org/files/pdf/BACEI_PFL_6192020.pdf>.

Newly enacted federal leave tied to COVID-19 leaves out up to 80% of the workforce and expires at the end of the year, making this bill necessary to ensure California workers affected by the coronavirus can take time to care for themselves or a sick family member and keep their workplaces and communities healthy and safe."

Arguments in Support:

A coalition of over 200 worker advocacy organizations and unions, including the California Work and Family Coalition, the American Civil Liberties Union of California, the California Labor Federation, and SEIU California, argue that "the purpose of California's wage replacement and job protection laws is to allow families to recover from illnesses and be there for each other during life's significant moments – when a baby is born, when a parent is dying of cancer, or a spouse suffer a stroke – without having to worry about losing their job, health benefits, or income. Unfortunately, the laws do not align, and many more people are eligible for wage replacement than job protection, which leaves millions of Californians vulnerable to losing their jobs and long-term financial security for taking the leave they need to care for themselves or their families."

The worker advocacy coalition further asserts "[l]ow-wage workers are disproportionately less likely to be covered, as they are more likely to work for small employers. A 2018 survey conducted by the California Employment Development Department (EDD) determined that a top reason for not using Paid Family Leave was fear of job loss. . . . As a result, workers with low wages are not utilizing the Paid Family Leave Program as frequently as higher wage workers. In 2018, workers who earned less than \$20,000 a year made up over 38% of the state's workforce, yet they only represent 24% of total claims that same year. Of the 6.8 million workers who earned less than \$20,000 in 2018 and were covered by the PFL program, only 45,672 workers utilized the PFL program. This 0.7% utilization rate is lower than that for other income levels, which all exceeded 2% utilization. . . . [W]orkers should be able to access the SDI and PFL benefits that they pay for out of their own paychecks without having to risk their jobs."

The worker advocacy coalition also argues "[t]he California Family Rights Act's narrow definition of family should be consistent with the more inclusive definition in Paid Family Leave. . . . An inclusive family definition is especially important for the LGBTQ community, people with or caring for those with disabilities, veterans, and for the increasing number of Californians, disproportionately people of color, living in multigenerational households."

Arguments in Opposition:

A coalition of employer organizations, including the California Chamber of Commerce, argue, among other things, that it disproportionately impacts small employers in California with only 5 employees, exposes small employers to costly litigation even for unintentional mistakes, imposes a significant administrative burden, and adds costs to small employers even though it is not paid.

Regarding the impact on small employers with 5 employees, the Chamber asserts "[a]ccording to the most recent labor market data from the Employment Development Department (EDD), out of California's approximately 1.6 million employers, approximately 173,000 employers in California have between 5-10 employees, and will be limited in their ability to manage this leave." Quoting a 2011 report on Paid Family Leave, the Chamber emphasizes "[v]ery small businesses like this one [which had three employees] do face special challenges [to cover leaves] since an inevitable effect of their size is that very few co-workers are available to cover the work when someone is absent."

With regard to the increased exposure to costly litigation, the Chamber argues "[a]n employer with only five employees does not have a dedicated human resources team or in-house counsel to advise them on how to properly administer this leave, document it, track it, obtain medical verifications, etc. The regulations on implementing the 12 weeks of leave under CFRA are approximately 36 pages long. A small employer is bound to make an unintentional mistake along the way, which will cost them in litigation."

The Chamber further argues that this bill "adds costs to small employers even though it is not paid. . . . The leave is 'protected,' meaning an employer must return the employee to the same position the employee had before going out on leave. This means holding a position open for three months or more. While an employer can temporarily fill the position with a new employee, that replacement usually comes at a premium. A replacement employee knows it is short term and, therefore, requires a premium wage, is less dedicated to the position, and often leaves for a better opportunity at a moment's notice. Also, many jobs require extensive amount of time and money to train a new employee, adding another cost. Some employers shift the work to other existing employees, which often leads to overtime pay. And, most of the leaves of absence require employers to maintain health benefits while the employee is out."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, General Fund administrative costs to the Department of Fair Employment and Housing (DFEH) of approximately \$1.1 million to process an estimated 2,300 additional CFRA complaints.

VOTES:

SENATE FLOOR: 21-12-7

YES: Allen, Archuleta, Atkins, Beall, Durazo, Lena Gonzalez, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Rubio, Skinner, Stern, Wieckowski, Wiener

NO: Borgeas, Caballero, Chang, Dahle, Dodd, Glazer, Grove, Hurtado, Jones, Melendez, Moorlach, Nielsen

ABS, ABST OR NV: Bates, Bradford, Galgiani, Morrell, Roth, Umberg, Wilk

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Kalra, Carrillo, Gonzalez, Jones-Sawyer, Luz Rivas

NO: Flora, Diep

ASM APPROPRIATIONS: 11-5-2

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Eduardo Garcia, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Diep, Fong, Voepel

ABS, ABST OR NV: Gabriel, Petrie-Norris

UPDATED:

VERSION: June 29, 2020

CONSULTANT: Justin Delacruz / L. & E. / (916) 319-2091

FN: 0003283