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Featured News

ALERT

Proposed Bill Would Add "Family Caregivers" To The "Protected Categories" List

Background

The California Fair Employment and Housing Act (California Government Code § 12940 *et seq.*) prohibits various forms of discrimination in employment and housing. The current "protected categories" are race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person. The common thread that runs between these various categories is that they are entitled to some level of protection under the 14th amendment to the U.S. Constitution. The California statute gives an aggrieved party the right to file an administrative claim with the California Department of Fair Employment and Housing, and/or the Equal Employment Opportunity Commission. A party can also file a civil lawsuit and seek injunctive relief, compensatory damages, punitive damages, and attorney's fees.

In February 2023, Assembly member Buffy Wicks introduced a bill that, if passed, would amend the Government Code to add "family caregiver status" to the list of protected categories.

What Is AB 524?

The bill defines "Family caregiver status" to mean a person who is contributes to the care of one or more family members. For purposes of this bill, "family member" means a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, *or any other individual related by blood or whose association with the employee is the equivalent of a family relationship.*

The bill would amend section 12940 to read:

SEC. 4. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, **family caregiver status**, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

Briefly, the rationale for the bill is:

Family caregiver (or family responsibilities) discrimination occurs when parents and those who care for their elderly or disabled family members suffer adverse employment actions due to an employer bias that caregiving responsibilities make workers unreliable, uncommitted, and less valuable as employees—regardless of actual job performance. These assumptions can lead to lower wages, lack of advancement, harassment, and job loss. Employment discrimination against workers with family caregiving responsibilities is common and has devastating economic and health consequences[1].

Four states (Alaska, Delaware, Minnesota and New York) currently prohibit discrimination based on parental or caregiver status. Several other states, including Illinois, New York, Pennsylvania, Tennessee, and West Virginia, are considering similar bills.

Assembly member Wicks proposed a similar bill last year, AB 2182, which sought to add “familial responsibilities” as a protected category under FEHA, but that bill did not advance beyond the Assembly.

The bill passed out of the Assembly Judiciary Committee and awaits a hearing before the Committee on Labor and Employment.

Why This Bill Would Hurt Employers

Here is Assembly member Wicks’ comment:

"Who we count as members of our family and choose to care for includes so many more Californians than what our current laws recognize," stated Wicks. "Employee protections must continue to evolve so workers can care for those they love, and not get punished for it. AB 524 and AB 518 are important next steps to making that happen."

The California Chamber of Commerce opposes this bill, calling it a “job killer.” The Chamber’s

opposition is stated as:

"AB 524 proposes to add any individual with "family caregiver status" as a new protected class under FEHA. That term is defined to include any worker who "contribute[s] to the care of one or more family members." A "family member" is *not* limited to an actual family member. Rather, it includes **any person who the employee subjectively considers to be like family** . This could include a neighbor or an employee's child's friend. Every employee could arguably fall into the category of a family caregiver.

Although proponents of AB 524 claim that adding family caregiver status to FEHA simply clarifies existing laws, the bill actually is a significant expansion of FEHA and provisions like AB 524's have been rejected by the Legislature for the last two years.

Because whether an employee contributes to the care of another or whether someone is like family to them are subjective determinations, the employer has *no* ability to dispute an employee designating themselves as having family caregiver status. Any dispute would open up the employer to costly litigation. 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."

Further, the bill creates a de facto accommodation requirement because 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."

Opponents also note that many current laws provide employees time to act as a caregiver, such as leave where a school or childcare center is unavailable; the California Family Rights Act (leave to care for a family member or other designated person of the employee's choice); the Healthy Workplace Healthy Family Act and related "kin care" statutes also allow sick time to be used to care for someone else. Any employer who retaliates against an employee for using these leaves is liable for unlawful retaliation.

Brothers Smith Analysis

The available research into this issue does not include any data documenting the job losses or lost revenue due to discrimination on the basis of status as a family caregiver. There is nothing on record to quantify the extent of the discrimination which this bill purports to address. There is also insufficient data to confirm that the existing laws allowing for personal and family leave are broadly insufficient to allow family caregivers to pursue gainful employment. The arguments in favor of the bill are speculative, in that they set forth harm that "may" happen.

This likely explains the overbreadth of the bill's language. As a practical matter, the bill's definition of "caregiver" is so broad as to potentially apply to any adult that has family members. Employers would have no ability to confirm an employee's claimed status as a "caregiver." Any work schedule could be disrupted with no recourse.

The bill is poorly drafted, insufficiently documented, and lacks evidentiary support. It is also potentially limitless and therefore unenforceable. It will increase litigation extensively.
Accordingly, you may wish to consider contacting your elected officials and urging them to vote against this proposed legislation.

If you have any additional questions or comments related to the proposed bill, please do not hesitate to contact our office.

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[1] https://stateinnovation.org/at-a-glance-family-caregiver-discrimination/

Author

Horace W. Green
T 925.944.9700
hgreen@brotherssmithlaw.com

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Email Us

2033 North Main Street, Suite 720
Walnut Creek, California 94596
T 925.944.9700 F 925.944.9701

www.brotherssmithlaw.com