

## CONCURRENCE IN SENATE AMENDMENTS

AB 1041 (Wicks)

As Amended August 16, 2022

Majority vote

**SUMMARY**

Expands the list of individuals for which an employee can take leave under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014 to include a "designated person", by the employee, and allows an employer to limit the employee to one designated person per 12-month period for family care and medical leave.

**Senate Amendments**

- 1) Define "designated person" as any individual related by blood or whose association with the employee is the equivalent of a family relationship.
- 2) Permit an employee to identify a designated person at the time an employee requests the leave.
- 3) Define "parent" to include, among other persons, a parent-in-law.

**COMMENTS**

According to an article by the Center for American Progress, an analysis of United States (U.S.) Census Bureau data in 2020 shows that just 18.4% 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% to 11.1%."<sup>1</sup>

**According to the Author**

"Due to cultural, economic and social forces, the overwhelming majority of households today depart from the "nuclear family" model of a married couple and their biological children—instead, they increasingly include close loved ones who aren't biologically or legally related. Still, California's family leave laws continue to reflect the outdated nuclear family model and only allow workers time off to care for certain narrowly defined family members. This policy gap disproportionately affects California's LGBTQI community. Many LGBTQI adults, especially older adults, do not have accessible relationships with biological relatives. As a result,

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

they are less likely to have biological family or partner support when they need care and often rely on chosen family.

California also has a higher percentage of extended families living in multigenerational households and it is not uncommon for individuals in California to be living with cousins, aunts, uncles, and other relatives not covered by our leave laws, especially as families weather the COVID-19 pandemic. 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% provide care for a friend, neighbor, or other unrelated person. This has become even more important during the COVID-19 pandemic when many older adults live alone and have families who live far away."

### **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% 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."

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee:

This bill would result in additional workload to the Department of Fair Employment and Housing (DFEH) to investigate and adjudicate an increased (but unknown) number of complaints related to CFRA. Total costs would likely be in the hundreds of thousands of dollars annually (General Fund).

The Division of Labor Standards Enforcement within the Department of Industrial Relations would incur an absorbable increase in workload resulting from additional wage claims and retaliation complaints related to paid sick day requests.

The State as a direct employer would experience additional costs for state departments to the extent this bill increases use of CFRA or paid sick days. The magnitude of these costs is unknown (General Fund and special funds).

**VOTES:****ASM LABOR AND EMPLOYMENT: 5-2-0****YES:** Kalra, Lorena Gonzalez, Jones-Sawyer, Reyes, Ward**NO:** Flora, Seyarto**ASM APPROPRIATIONS: 12-4-0****YES:** Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas**NO:** Bigelow, Megan Dahle, Davies, Fong**ASSEMBLY FLOOR: 53-16-10****YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Cunningham, Friedman, Gabriel, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon**NO:** Bigelow, Choi, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron**ABS, ABST OR NV:** Boerner Horvath, Chen, Daly, Frazier, Cristina Garcia, Maienschein, Nguyen, O'Donnell, Quirk-Silva, Ramos**SENATE FLOOR: 31-7-2****YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener**NO:** Bates, Borgeas, Dahle, Jones, Nielsen, Ochoa Bogh, Wilk**ABS, ABST OR NV:** Grove, Melendez**UPDATED**

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