
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

AB 1041 (Wicks) - Employment: leave

Version: April 22, 2021

Urgency: No

Hearing Date: July 5, 2021

Policy Vote: L., P.E. & R. 4 - 1

Mandate: No

Consultant: Robert Ingenito

Bill Summary: AB 1041 would add a “designated person” to the list of individuals for whom an employee may take leave to care for under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014. The bill would (1) define “designated person” as a person identified by the employee at the time the employee requests CFRA leave or a paid sick day, and (2) allow an employer to limit the employee to one designated person per 12-month period.

Fiscal Impact:

- 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).

Background: Current law (CFRA), grants workers up to 12 weeks of family leave to care for a newborn child or to care for family members suffering from a serious medical condition. Prior to 2021, CFRA applied only to employers with 50 more employees, but SB 1383 (Jackson, Chapter 86, Statutes of 2020), extended CFRA’s medical and family leave protections through the following policy changes:

- Requires an employer with at least 5 employees (rather than at least 50 employees) grant an employee request to take up to 12 weeks of unpaid leave for family care and medical leave if the employee has had 180 days of service with the employer.
- Provides CFRA leave protections for employees to care for additional types of family members, including domestic partners, children of domestic partners, grandparents, grandchildren, siblings and parents-in-law.

- Removes from existing law a provision that authorizes an employer, under specified conditions, to refuse to reinstate an employee returning from leave to the same or comparable position the employee held prior to the leave.

Additionally, current law (the Healthy Workplaces, Healthy Families Act of 2014), requires employers to provide a minimum of three days of sick leave to their employees to take care of oneself or a family member. Covered family members under both laws generally include a child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling.

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.

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 current leave laws. 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.

Proposed Law: This bill would (1) expand the list of individuals for which an employee can take leave under the California Family Rights Act and the Healthy Workplaces, Healthy Families Act of 2014 to include a designated person by the employee, (2) define a “designated person” as a person identified by the employee at the time the employee requests CFRA leave or paid sick days, and (3) authorize employers to limit employee to one designated person per 12-month period.

Related Legislation:

- AB 995 (L. Gonzalez) would expand the state’s paid sick leave program to provide an employee with no less than 40 hours or five days of sick leave by the 200th calendar of employment. AB 995 is on the inactive file on the assembly floor.
- AB 1119 (Wicks) 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 pending in Assembly Appropriations Committee.

- SB 1383 (Jackson, Chapter 86, Statutes of 2020) expanded the CFRA to provide job-protected leave to additional employees (those working for employers with five or more employees instead of the previous 50 employee threshold) and expanded the list of family members for which an employee can take leave.

Staff Comments: DFEH does not have sufficient data to make a reliable estimate for the number of CFRA complaints (and resulting workload) it would experience as a result of the bill. As a proxy, the department used data from the New Jersey Family Leave Insurance Program, and estimated that it would receive approximately 140 additional complaints for investigation per year. To meet such an increase in workload, DFEH would annually require about \$1.1 million and eight positions across several divisions.

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