
CalChamber
CALIFORNIA CHAMBER OF COMMERCE
NFIB
California Food Producers
CMTA
CIVIL JUSTICE ASSOCIATION OF CALIFORNIA
CAJPA
California Association of Joint Powers Authorities
CALIFORNIA RESTAURANT ASSOCIATION
CBIA
CALIFORNIA HOSPITAL ASSOCIATION
CABIA California
BUSINESS & INDUSTRIAL ALLIANCE
cga
CALIFORNIA GROCERS ASSOCIATION
CAA
California Apartment Association
Associated General Contractors (AGC)
CEA
CONSTRUCTION EMPLOYERS' ASSOCIATION
SWCLC
Southwest California Legislative Council
California Farm Bureau
ACHD
ASSOCIATION OF CALIFORNIA HEALTHCARE DISTRICTS
FAMILY BUSINESS ASSOCIATION OF CALIFORNIA
California Landscape Contractors Association
CALIFORNIA STATE COUNCIL OF SHRM
PRISM
Public Risk Innovation, Solutions, and Management
CALIFORNIA RETAILERS ASSOCIATION
ORANGE COUNTY BUSINESS COUNCIL
The Leading Voice of Business
CNCDA
California New Car Dealers Association
West Ventura County Business Alliance
autocare ASSOCIATION
Independence drives us.
CAWA
CALIFORNIA RAILROADS
CBBD
CAL SMACNA
HOUSING CONTRACTORS OF CALIFORNIA
SANTA BARBARA SOUTH COAST CHAMBER OF COMMERCE
FROM GOLETA TO CARPINTERIA
GREATER BAKERSFIELD CHAMBER
BUILDING Something Better
GREATER COACHELLA VALLEY CHAMBER
TULARE CHAMBER of COMMERCE
SANTA ANA CHAMBER OF COMMERCE
GREATER High Desert CHAMBER OF COMMERCE
ADELANTO • APPLE VALLEY • HESPERIA • VICTORVILLE
TORRANCE Area Chamber of Commerce
The Chamber
Long Beach Area Chamber of Commerce
KERN COUNTY HISPANIC CHAMBER OF COMMERCE
SIMI VALLEY CHAMBER
The Heartbeat of Business
WESTERN CARWASH ASSOCIATION
SAN GABRIEL VALLEY ECONOMIC PARTNERSHIP
PLEASANTON CHAMBER of COMMERCE
More To See
redondo BEACH
Chamber of Commerce & Visitors Bureau
BREA CHAMBER
CATALYST. CONVENER. CHAMPION.
CHINO VALLEY
SANTA MARIA VALLEY Chamber
MURRIETA/WILDOMAR CHAMBER OF COMMERCE
Garden Grove
Chamber of Commerce
FRESNO CHAMBER of COMMERCE
SOUTH BAY ASSOCIATION OF CHAMBERS of COMMERCE
Wilmington Chamber of Commerce
PHCC OF CALIFORNIA
PLUMBING-HEATING-COOLING CONTRACTORS ASSOCIATION
Best People. Best Practices.
LODI CHAMBER OF COMMERCE
CALIFORNIA ASSOCIATION of WINEGRAPE GROWERS
FountainValley CHAMBER OF COMMERCE
The Voice of Business Since 1966
FREMONT CHAMBER OF COMMERCE
nocc
NORTH ORANGE COUNTY CHAMBER
Oceanside CHAMBER of COMMERCE
ADVANCING OCEANSIDE
RANCHO CORDOVA CHAMBER OF COMMERCE
LCF
MISSION VIEJO Making Business Happen CHAMBER OF COMMERCE
CARLSBAD CHAMBER OF COMMERCE
SANTA ROSA METROCHAMBER
Los Angeles Area Chamber of Commerce
The Chamber NEWPORT BEACH
NORTH SAN DIEGO BUSINESS CHAMBER
CONNECTIONS START HERE.
GILROY CHAMBER of COMMERCE
ECONOMIC DEVELOPMENT
Encinitas CHAMBER OF COMMERCE
LAGUNA NIGUEL CHAMBER OF COMMERCE
We mean business
GREATER CONEJO VALLEY CHAMBER OF COMMERCE
LOS ANGELES OPG OFFICIAL GARAGE UNIT
Vista Chamber of Commerce
SANTA MARIA VALLEY Chamber
EL DORADO HILLS CHAMBER OF COMMERCE
Clovis CHAMBER OF COMMERCE
La Verne CHAMBER OF COMMERCE
IMPERIAL VALLEY REGIONAL CHAMBER of COMMERCE
danville area CHAMBER OF COMMERCE
FAMILY WINEMAKERS of CALIFORNIA
CORONA CHAMBER OF COMMERCE
GLENDORA CHAMBER OF COMMERCE
Pride of the Foothills
THE WALNUT CREEK CHAMBER
CHAMBER OF COMMERCE & VISITORS BUREAU
FOLSOM CHAMBER
CONNECTING BUSINESS & COMMUNITY
GREATER RIVERSIDE CHAMBERS OF COMMERCE
WINE INSTITUTE
THE EXETER CHAMBER OF COMMERCE
paso robles CHAMBER of COMMERCE
THE CHAMBER San Diego · East County
CITRUS HEIGHTS CHAMBER
CONNECTING BUSINESS EDUCATION COMMUNITY
SANTA CLARITA VALLEY CHAMBER OF COMMERCE
HOLLYWOOD CHAMBER OF COMMERCE

UPDATED
JOB KILLER

March 17, 2023

TO: Members, Assembly Judiciary Committee

SUBJECT: AB 524 (WICKS) DISCRIMINATION: FAMILY CAREGIVER STATUS
OPPOSE/JOB KILLER – AS AMENDED MARCH 15, 2023

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE AB 524 (Wicks)** which has been labeled a **JOB KILLER. AB 524** creates a broad new protected class under FEHA: employees with family caregiver status. This broad group would include any employee who "contributes" to the care of any person of their choosing. This would encompass essentially every worker and creates an automatic basis for an individual in that new classification to challenge any adverse employment action, opening up a floodgate of litigation. Further, this new classification would be used to essentially require employers, including small businesses, to accommodate all caregiving needs beyond what is already required under existing law or else they may face a discrimination claim. Between litigation exposure and forced accommodations, **AB 524** will increase the cost of doing business in California and the costs of goods and services.

"Family Caregiver Status" Is Broadly Defined and Is a Subjective Determination

AB 524 proposes to add any individual with "family caregiver status" as a new protected class under FEHA. That term is extremely broad. It is defined to include any worker who "contribut[es] 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. Proponents of **AB 524** claim that adding family caregiver status to FEHA is a simply a "clarification" of existing laws, but that is not true. **AB 524** is a significant expansion of FEHA and has been rejected by this 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 the employer up to costly litigation. Further, 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." For example, even if the employee did not request time off as an accommodation and simply took time off, whenever they wanted, scheduled or unscheduled, the employer could not discipline or terminate the employee for the time off without risking potential litigation under FEHA for discrimination based on family caregiver status. This will significantly limit an employer's ability to address discipline issues in the workplace, maintain stability, and eradicate any issues without costly litigation.

AB 524 Creates a *De Facto* Accommodation Requirement in Addition to Existing Leave Laws

As discussed above, any action taken by an employer could be challenged as discrimination based on family caregiver status. 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.

This has happened in California courts regarding the issue of "associational disabilities."[1] In *Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016), the court of appeals stated that it believes FEHA includes protections for associated disabilities. The plaintiff in that case had requested a

[1] There are opposing views as to whether FEHA protects "associational disabilities", which is when the employee is associated with someone, like a family member, who is disabled.

schedule change due to his son's disability. The schedule change was not approved and the plaintiff refused to work the other schedule, resulting in termination. On appeal, the plaintiff did not raise whether he was entitled to a reasonable accommodation. Instead, his claim was that he had been discriminated against. The court agreed that the discrimination claim could move forward even if there was no statutory duty to accommodate because the accommodation issue was "significantly intertwined" with the prohibition against discrimination. *Id*. at 1038-39, 1046.

Trial attorneys will surely read **AB 524** as requiring the same outcome: rejecting a caregiver's accommodation request is discriminatory even if there is no explicit legal duty to provide an accommodation. Due to the threat of litigation, employers will be forced to treat this law as effectively requiring accommodation. This is especially true for small employers who do not have access to legal counsel or cannot afford to fight litigation and will end up paying a costly settlement.

There are many existing laws with parameters that provide employees time to act as a caregiver. Labor Code Section 230.8 provides 40 hours of leave for situations were a school or childcare center is unavailable. The California Family Rights Act (CFRA) provides up to 12 weeks of leave to care for a family member or other designated person of their choice. CFRA was broadened just this year to include "designated persons" (non-family members) in the list of people for whom the employee can take time off. 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. If the Legislature finds these leaves insufficient, rather than imposing new burdens on employers it should provide more flexible work options to workers by revising California's overly rigid wage and hour laws that prohibit workplace flexibility.

AB 524 Exposes Employers, Including Small Businesses, to Costly Litigation Due to Its Private Right of Action:

FEHA includes a private right of action for any alleged discrimination against a protected classification. Liability includes compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. A 2017 study by insurance provider Hiscox regarding the cost of employee lawsuits estimated that the cost for a small to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately $160,000, which was a $35,000 increase from Hiscox's study just two years earlier. This amount, especially for a small employer, reflects the financial risk associated with defending a lawsuit under FEHA. In 2016, Hiscox found that U.S. companies had a 10.5% chance of having an employment charge filed against them. For California, that percentage was **56.5%.** According to the Civil Rights Department's (CRD)[2] annual reports, thousands of complaints are filed every year, with more than 70% of those employees choosing to immediately pursue civil litigation instead of having the DFEH investigate their claim.

For these and other reasons, we respectfully **OPPOSE AB 524** as a **JOB KILLER.**

Sincerely,

Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Associated General Contractors
Association of California Healthcare Districts
Auto Care Association
Brea Chamber of Commerce
California Apartment Association
California Association of Joint Powers Authorities
California Association of Sheet Metal and Air Conditioning Contractors National Association

[2] Formerly the Department of Fair Employment and Housing (DFEH)

California Association of Winegrape Growers
California Beer and Beverage Distributors
California Building Industry Association
California Business and Industrial Alliance
California Chamber of Commerce
California Farm Bureau
California Food Producers
California Grocers Association
California Hospital Association
California Landscape Contractors Association
California Manufacturers and Technology Association
California New Car Dealers Association
California Railroads
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management (CalSHRM)
Carlsbad Chamber of Commerce
CAWA – Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Clovis Chamber of Commerce
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
El Dorado Hills Chamber of Commerce
Encinitas Chamber of Commerce & Visitor's Center
Exeter Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Folsom Chamber of Commerce
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Kern County Hispanic Chamber of Commerce
La Cañada Flintridge Chamber of Commerce
La Verne Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business
Newport Beach Chamber of Commerce
North Orange County Chamber
North San Diego Business Chamber

Oceanside Chamber of Commerce
Official Police Garages Los Angeles
Orange County Business Council
Paso Robles Chamber of Commerce
Pleasanton Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association
Public Risk Innovation, Solutions and Management (PRISM)
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego Regional East County Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
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
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Carwash Association
Wilmington Chamber of Commerce
Wine Institute

cc: Legislative Affairs, Office of the Governor
Zak Castillo-Krings, Office of Assemblymember Wicks
Manuela Boucher, Assembly Judiciary Committee
Daryl Thomas, Assembly Republican Caucus

AH:am