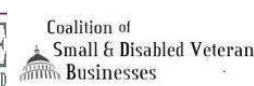
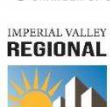
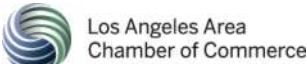




CONSTRUCTION EMPLOYERS' ASSOCIATION





JOB KILLER

September 19, 2023

The Honorable Gavin Newsom
 Governor, State of California
 State Capitol
 Sacramento, CA 95814

**SUBJECT: AB 524 (WICKS) DISCRIMINATION: FAMILY CAREGIVER STATUS
 REQUEST FOR VETO**

The California Chamber of Commerce and the organizations listed below respectfully **REQUEST** your **VETO** of **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 “provides direct care” 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 could be used to 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, depending on how courts interpret the term “special” accommodation. 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 “provides direct care” to a spouse, parent, sibling, grandparent, grandchild, domestic partner or designated person. An employee would be able to claim this status to care for a list of “family members” but also any person who is designated by the employee. 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 provides direct care to another is a subjective determination, 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. Although amendments were taken in Senate Judiciary Committee to say an employer is not required to provide “special” accommodation, we remain unclear as to what a “special” accommodation is. 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 could 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 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. Employers will end up litigating what type of accommodation is “special” and what is not. Due to the threat of litigation, employers will be forced to treat this law as effectively requiring broad 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 where 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 **REQUEST** your **VETO of AB 524 (Wicks)** as a **JOB KILLER**.

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.

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

Sincerely,



Jennifer Barrera
President and Chief Executive Officer

Acclamation Insurance Management Services (AIMS), Dominic Russo
Allied Managed Care (AMC), Dominic Russo
Associated General Contractors, Bret Gladfelty
Association of California Healthcare Districts, Sarah Bridge
Auto Care Association, Aaron Lowe
Brea Chamber of Commerce, Adam Pryor
California Apartment Association, Embert P. Madison, Jr.
California Association of Joint Powers Authorities, Faith Borges
California Association of Sheet Metal and Air Conditioning Contractors National Association, Chris Walker
California Association of Winegrape Growers, Michael Miiller
California Bankers Association, Melanie Cuevas
California Beer and Beverage Distributors, Victoria G. Horton
California Building Industry Association, Nick Cammarota
California Business Properties Association, Matthew Hargrove
California Chamber of Commerce, Courtney Jensen
California Employment Law Council, Mike Belote
California Farm Bureau, Bryan Little
California Food Producers, Ben Ebbink
California Grocers Association, Leticia Garcia
California Hispanic Chambers of Commerce, Julian Canete
California Hospital Association, Gideon Baum
California Hotel & Lodging Association, A.J. Rossitto
California Landscape Contractors Association, Sandra Giarde
California Manufacturers and Technology Association, Lawrence Gayden
California New Car Dealers Association, Les Swizer
California Railroads, Don Maddy
California Rental Housing Association, Sid Lakireddy
California Restaurant Association, Katie Davey
California Retailers Association, Sarah Moo Pollo
California State Council of the Society for Human Resource Management (CalSHRM), Michael S. Kalt
Carlsbad Chamber of Commerce, Bret Schanzenbach
CAWA – Representing the Automotive Parts Industry, Rodney Perini
Chino Valley Chamber of Commerce, Zeb Welborn
Citrus Heights Chamber of Commerce, Diane Ebbitt-Riehle
Civil Justice Association of California, Jaime Huff
Clovis Chamber of Commerce, Greg Newman
Coalition of California Chambers – Orange County, Benjamin Medina
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois
Construction Employers' Association, Michael Walton
Corona Chamber of Commerce, Anthony Maldonado
Danville Area Chamber of Commerce, Judy Lloyd
El Dorado Hills Chamber of Commerce, David Butler
Encinitas Chamber of Commerce, Sherry Yardley
Exeter Chamber of Commerce, Tina Rice
Family Business Association of California, Robert Rivinius
Family Winemakers of California, Pete Downs
Flasher Barricade Association (FBA), Kenneth Johnston
Folsom Chamber of Commerce, Bill Romanelli
Fontana Chamber of Commerce, Phil Conthran
Fountain Valley Chamber of Commerce, Memory Bartlett

Fremont Chamber of Commerce, Matt Senekeremian
Fresno Chamber of Commerce, Scott Miller
Garden Grove Chamber of Commerce, Henry Rogers
Gilroy Chamber of Commerce, Victoria Valencia
Glendora Chamber of Commerce, Joe Cina
Greater Bakersfield Chamber of Commerce, Kaelyn Peterson
Greater Coachella Valley Chamber of Commerce, Diana Soto
Greater Conejo Valley Chamber of Commerce, Adam Haverstock
Greater High Desert Chamber of Commerce, Mark Creffield
Greater Riverside Chambers of Commerce, Ana Martin
Greater San Fernando Valley Chamber of Commerce, Nancy Hoffman Vanyek
Hollywood Chamber of Commerce, Chris Micheli
Housing Contractors of California, Bruce Wick
Imperial Valley Regional Chamber of Commerce, Bari Smith Bean
Kern County Hispanic Chamber of Commerce, Jay Tamsi
La Cañada Flintridge Chamber of Commerce, Pat Anderson
La Verne Chamber of Commerce, Leah Skinner
Laguna Niguel Chamber of Commerce, Scott Alevy
Livermore Valley Chamber of Commerce, Dawn P. Argula
Lodi Chamber of Commerce, Pat Patrick
Long Beach Area Chamber of Commerce, Jeremy Harris
Los Angeles Area Chamber of Commerce, Maria S. Salinas
Mission Viejo Chamber of Commerce, Dave Benson
Murrieta/Wildomar Chamber of Commerce, Patrick Ellis
National Federation of Independent Business, Tim Taylor
Newport Beach Chamber of Commerce, Steve Rosansky
North Orange County Chamber, Theresa Harvey
North San Diego Business Chamber, Manuel Gomez
Oceanside Chamber of Commerce, Scott Ashton
Official Police Garages Los Angeles, Eric Rose
Orange County Business Council, Connor Medina
Palos Verdes Peninsula Chamber of Commerce, Marilyn Lyon
Paso Robles Chamber of Commerce, Amy Russell
Pleasanton Chamber of Commerce, Steve Van Dorn
Plumbing-Heating-Cooling Contractors Association of California, Richard Markuson
Public Risk Innovation, Solutions and Management (PRISM), Jen Hamelin
Rancho Cordova Area Chamber of Commerce, Diann H. Rogers
Redondo Beach Chamber of Commerce, Henry Rogers
San Diego Regional East County Chamber of Commerce, Rick Wilson
San Gabriel Valley Economic Partnership, Nayiri E Baghdassarian
San Juan Capistrano Chamber of Commerce, Benjamin Medina
Santa Ana Chamber of Commerce, Timothy Jemal
Santa Barbara South Coast Chamber of Commerce, Dustin Hoiseth
Santa Clarita Valley Chamber of Commerce, Ivan Volschenk
Santa Maria Valley Chamber of Commerce, Glenn Morris
Santa Rosa Metro Chamber of Commerce, Ananda Sweet
Santee Chamber of Commerce, Kristen Dare
Simi Valley Chamber of Commerce, Kathi Van Etten
South Bay Association of Chambers of Commerce, Henry Rogers
South County Chambers of Commerce, Kathy McCorry
Southwest California Legislative Council, Erik McLeod
Torrance Area Chamber of Commerce, Donna Duperron
Tulare Chamber of Commerce, Donnette Silva Carter
Vista Chamber of Commerce, Rachel Beld
Walnut Creek Chamber of Commerce, Bob Linscheid
West Ventura County Business Alliance, Nancy Lindholm
Western Carwash Association, David A. Murillo
Western Growers Association, Matthew Allen

Wilmington Chamber of Commerce, Dan Hoffman
Wine Institute, Noelle Cremers
Yorba Linda Chamber of Commerce, Alex Hernandez

JB:CJ:am