



**\*\*JOB KILLER\*\***

### FLOOR ALERT

April 26, 2013

TO: Members, California State Senate

FROM: California Chamber of Commerce  
Air Conditioning Trade Association  
Associated Builders and Contractors of California  
California Bankers Association  
California Farm Bureau Federation  
California Framing Contractors Association  
California Grocers Association  
California Independent Grocers Association  
California Manufacturers and Technology Association  
California Retailers Association  
National Federation of Independent Business  
Plumbing-Heating-Cooling Contractors Association of California  
Western Electrical Contractors Association

SUBJECT: **SB 761 (DESAULNIER) FAMILY TEMPORARY DISABILITY INSURANCE  
SCHEDULED FOR HEARING – APRIL 29, 2013  
OPPOSE – JOB KILLER**

The California Chamber of Commerce and the organizations listed above must **OPPOSE SB 761**, as it transforms the wage replacement benefits under the Paid Family Leave ("PFL") program into an additional protected leave of absence, thereby adding to the cost and burden for all California employers, especially small employers.

PFL is a **wage replacement** program, meaning that it provides employees with partial compensation while they are out on an employer approved leave of absence or a statutorily mandated protected leave of absence. The existing PFL, however, does not independently provide an employee with a right to a protected leave of absence. **SB 761** would dramatically alter PFL and transform it into an additional protected leave of absence. Specifically, by allowing an employee to sue for alleged discrimination on the basis that the employee applies for, used, or expressed an intent to use PFL, it essentially forces an employer to provide an employee with six weeks of leave while receiving PFL, or face costly litigation.

For example, the right to a leave of absence under the California Family Rights Act (CFRA) is only applicable to employers with 50 or more employees. Before qualifying for leave under CFRA, an employee must have worked at least 1250 hours in the prior year and certify that he or she satisfies one of the triggering events for the leave, such as the serious medical condition of a spouse. Leave under CFRA is unpaid and, therefore, an employee who qualifies for such leave may be able to take advantage of the wage replacement benefits under PFL. Pursuant to CFRA, employees have a right to return to work and a private right of action if they are discriminated or retaliated against due to their request and use of CFRA leave.

Pursuant to **SB 761**, however, an employee of an employer with **fewer** than 50 employees would now be able to request 6 weeks of leave, regardless of whether the employee worked one day, one week, or one year for the employer. If the employer denies the employee such leave because there is no statutorily mandated leave under which the employee qualifies, such as CFRA, and within temporal proximity to this denial the employee suffers an adverse employment action such as a written warning, the employee could file a lawsuit against the employer claiming discrimination or retaliation. This threat of potential litigation, with an employee only right to attorney's fees, transforms PFL into an additional protected leave, which will burden employers of all sizes.

California already has multiple protected leaves of absence that employers struggle to comply with and still manage their business operations effectively including the following: CFRA, pregnancy disability leave, military spouse leave, bone marrow donation leave, organ donation leave, school activities leave, school appearance leave, domestic abuse/sexual assault leave, volunteer firefighter/reserve peace officer leave, voting leave, juror leave, and disability leave. The cumulative impact of these existing leaves already creates a significant burden to California-only employers. Accordingly, any expansion of such leaves or the creation of new protected leaves, further impedes California employers' growth and their ability to manage their businesses.

**SB 761** also allows an employee to pursue civil litigation for discrimination, without first exhausting an administrative remedy. Discrimination or retaliation claims under the Fair Employment and Housing Act and CFRA require an employee to file a complaint with the Department of Fair Employment and Housing (DFEH) before pursuing civil litigation. Although this initial requirement to file with the DFEH is not overly burdensome, it still provides the agency with an opportunity to investigate the complaint. **SB 761** sidesteps this requirement that other similar discrimination complaints are forced to satisfy, thereby easing the process for potentially frivolous litigation.

For these reasons, we respectfully **OPPOSE SB 761**.

cc: The Honorable Mark DeSaulnier  
David Lanier, Office of the Governor  
Cory Botts, Senate Republican Caucus  
Senate Floor Analysis  
District offices, Members, California State Senate