

# SB 406 (JACKSON) EMPLOYMENT: LEAVE OPPOSE – **JOB KILLER**



## **\*\*FLOOR ALERT\*\***

September 11, 2015

TO: Members, California State Senate

**SUBJECT: SB 406 (JACKSON) EMPLOYMENT: LEAVE  
OPPOSE – JOB KILLER/ REQUEST FOR NON-CONCURRENCE**

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE SB 406 (Jackson)**, as amended September 4, 2015, which has been identified as a **JOB KILLER**, as it will mandate employers to provide up to 24 weeks of protected leave, that can be taken each day in as small of increments of one-hour, with a threat of litigation and punitive damages for any unintentional misstep.

### **SB 406 Will Expand the Amount of Protected Leave an Employee May Take to Half of a Year:**

**SB 406** expands the family members for whom an employee may take a 12-week protected leave of absence to include a grandparent, a grandchild, parent-in-law, and siblings. The initial intent of CFRA was to provide a balance between an individual's work life and personal life. However, this proposed change would certainly disrupt that balance and negatively impact California employers.

Given the fact that these proposed individuals under **SB 406** are not covered under the corresponding and similar leave provided by the federal Family and Medical Leave Act (FMLA), this bill will potentially require a California employer to provide up to 24 weeks of protected leave. Specifically, under **SB 406**, an employee could utilize his or her 12 weeks of CFRA to care for the serious medical condition of a grandparent, who is not a family member covered under FMLA and, therefore, would not trigger FMLA leave.

Upon returning, the employee would still be entitled to another 12-week protected leave of absence under FMLA for his or her own medical condition or the medical condition of his or her spouse, child or parent. Notably, an employee can take CFRA and FMLA in as small of increments as one hour at a time, thereby providing an extensive amount of protected time off for California employees, that California employers would have to administer and track properly to protect against potential liability.

### **SB 406 Will Expose Employers to Costly Litigation for Frivolous Claims:**

CFRA includes a private right of action with the opportunity to obtain compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. This private right of action creates costly litigation for employers, even when employers take reasonable steps to address abuse under CFRA. For example, in *Richey v. Autonation*, 60 Cal.4<sup>th</sup> 909 (2015), an employee took CFRA leave from his employer for 12 weeks due to his own medical condition. However, while on "medical leave", the employee opened and worked at his own restaurant. The employer fired the employee and the employee sued the employer for retaliation for taking CFRA. Although the employer ultimately prevailed, the employer had to pay for litigation for over six years. See also *McDanel v. Eastern Municipal Water District Board*, 109 Cal.App.4<sup>th</sup> 702 (2003) (finding against employee who sued his employer for violation of CFRA after employee was terminated because he was found golfing and performing intermittent sprinkler installation/repair while he had requested time off to care for his father); *Rankins v. Verizon Communications Co.* (unpublished) 2007 WL 241154 (finding against employee who sued employer for violation of CFRA when the employee was terminated by employer for submitting false medical certification/letter for CFRA leave); *Holley v. Waddington North America, Inc.* (unpublished) 2012 WL 883134 (finding against employee who sued employer for interference with his rights under CFRA, even though employer provided the employee with over 14 months of leave).

**Employers Already Accommodate Employee's Requests for Time Off:**

Despite allegations otherwise, employers currently accommodate employee's personal needs with regard to caring for family members, without being forced to do so by law, or the threat of litigation. Employers engage in these accommodations, as a benefit to their employees to make sure the employee can balance their personal lives with their work. The claim that employers unilaterally deny employees any leave for these proposed additional family members is unfounded. Employers do not need to be threatened with litigation, which includes the potential for punitive damages, for accommodations they are already providing, as **SB 406** seeks to do.

**California Already Has an Extensive List of Protected Leave of Absences:**

California already has extensive family-related protected leaves of absence including the following: *Paid Sick Leave* (applicable to all employers and includes employee and family members); *Kin Care* (applicable to all employers and allows employees to use half of paid time off for family members' illnesses); *California Family Rights Act* (applicable to employees with 50 or more employees and provides 12-week leave of absence for employee's medical condition, family members medical condition, or to bond with new child); *Pregnancy Disability Leave* (applicable to employers with 5 or more employees and provides 4 months of protected leave that is in addition to CFRA's 12 weeks); *School Activities Leave* (applicable to employers with 25 or more employees for 40 hours per year to attend school related activities of a child).

For these reasons, we respectfully **OPPOSE SB 406** as a **JOB KILLER** and urge your "**NO**" vote and **REQUEST NON-CONCURRENCE** with Assembly amendments when it comes before you for consideration.

Jennifer Barrera, California Chamber of Commerce  
Agricultural Council of California  
Air Conditioning Trade Association  
Alhambra Chamber of Commerce  
American Fire Sprinkler Association  
Associated Builders and Contractors of California  
Associated Builders and Contractors – San Diego Chapter  
Associated General Contractors  
Brea Chamber of Commerce  
California Ambulance Association  
California Association for Health Services at Home  
California Association of Federal Firearm Licensees  
California Bankers Association  
California Cotton Ginners Association  
California Cotton Growers Association  
California Dairies, Inc.  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Grocers Association  
California Landscape Contractors Association  
California League of Food Processors  
California Manufacturers and Technology Association  
California Pool & Spa Association  
California Professional Associations of Specialty Contractors  
California Restaurant Association  
California State Association of Counties  
California Trucking Association  
Claremont Chamber of Commerce  
Family Business Association  
Far West Equipment Dealers Association  
Gilroy Chamber of Commerce  
Goleta Valley Chamber of Commerce



Greater Bakersfield Chamber of Commerce  
Greater Corona Valley Chamber of Commerce  
Lodi Chamber of Commerce  
Long Beach Chamber of Commerce  
National Federation of Independent Business  
Nisei Farmers League  
North Orange County Chamber of Commerce  
Orange Chamber of Commerce  
Oxnard Chamber of Commerce  
Palm Desert Area Chamber of Commerce  
Plumbing-Heating-Cooling Contractors Association of California  
Rancho Cordova Chamber of Commerce  
Redondo Beach Chamber of Commerce  
Simi Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Torrance Area Chamber of Commerce  
Western Agricultural Processors Association  
Western Electrical Contractors Association  
Western Growers Association  
Western Plant Health Association

cc: Camille Wagner, Office of the Governor  
The Honorable Hannah-Beth Jackson  
Anthony Archie, Assembly Republican Caucus  
District Offices, Members, California State Assembly  
Department of Industrial Relations  
Labor and Workforce Development Agency