



JOB KILLER

March 14, 2017

TO: Members, Senate Committee on Labor and Industrial Relations

FROM: California Chamber of Commerce
 American Petroleum and Convenience Store Association
 Associated Builders and Contractors – San Diego Chapter
 California Ambulance Association
 California Association of Winegrape Growers
 California Farm Bureau Federation
 California League of Food Processors

California Manufacturers and Technology Association
California Professional Association of Specialty Contractors
California Retailers Association
California Special Districts Association
California State Association of Counties
Camarillo Chamber of Commerce
Carlsbad Chamber of Commerce
Civil Justice Association of California
CSAC - EIA
El Dorado Hills Chamber of Commerce
Fresno Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater Riverside Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
League of California Cities
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber of Commerce
Murrieta Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Pleasant Hill Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Maria Valley Chamber of Commerce Visitor and Convention Bureau
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Western Electrical Contractors Association
Western Growers Association
Yuba-Sutter Chamber of Commerce

**SUBJECT: SB 63 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICE: PARENTAL LEAVE
OPPOSE – JOB KILLER**

The California Chamber of Commerce respectfully **OPPOSES SB 63 (Jackson)**, which has been identified as a **JOB KILLER**, as it targets and will significantly harm small employers in California with as few as 20 employees by adding to the existing burden under which they already struggle. Governor Brown vetoed a similar, but narrower, proposal just last year.

SB 63 Will Overwhelm Small Employers with a New 12-Week Mandatory Leave of Absence:

SB 63 targets small employers with as few as 20 employees within a 75-mile radius and requires those employers to provide **12 weeks** of leave, in addition to the other leaves of absence California already imposes. This mandate will overwhelm small employers as follows:

- (1) **SB 63 Creates a Combined 7-Month Protected Leave of Absence on Small Employers:**
California already requires employers with 5 or more employees to provide up to 4 months of protected leave for an employee who suffers a medical disability because of pregnancy. **SB 63** will add another 12 weeks of leave for the same employee, **totaling 7 months of potential protected**

leave. Such an extensive period of time is unreasonable for a small employer with a limited workforce to accommodate.

- (2) **SB 63 Could Impact Worksites that Have Substantially Fewer than 20 Employees:** **SB 63** is applicable to any employer that has 20 or more employees within a 75-mile radius. Employees at multiple worksites are aggregated together to reach the employee threshold under this proposal. Accordingly, a worksite that only has 5 employees will be required to accommodate this mandatory leave if there are other worksites in a 75-mile radius that have enough employees to reach the 20 employee threshold. The worksite of the employee who takes the leave is the location that will be impacted by the protected leave. Exposing employers with a limited number of employees at a worksite to this extensive mandatory leave will create a hardship.
- (3) **SB 63 Imposes a Mandatory Leave, with No Discretion to the Employer:** As a “protected leave,” with a threat of litigation to enforce it, **SB 63** mandates the small employer to provide 12 weeks of leave. The leave under **SB 63** must be given at the employee’s request, regardless of whether the employer has other employees out on other California required leaves. This mandate on such a small employer with a limited workforce creates a significant challenge for the employer’s ability to maintain operations.
- (4) **SB 63 Imposes Additional Costs on Small Employers that Are Struggling with the Increased Minimum Wage:** Even though the leave under **SB 63** is not “paid” by the employer, that does not mean the small employer will not suffer added costs. While the employee is on leave, the employer will have to: (1) maintain medical benefits while the employee is on leave; (2) pay for a temporary employee to cover for the employee on leave, usually at a higher premium; or, (3) pay overtime to other employees to cover the work of the employee on leave. The cost of overtime is higher given the increase of the minimum wage, which will add to the overall cost on small employers.
- (5) **SB 63 Exposes Small Employers to Costly Litigation:** **SB 63** labels an employer’s failure to provide the 12 week leave of absence as an “unlawful employment practice.” This label is significant as it exposes an employer to costly litigation under the Fair Employment and Housing Act (FEHA). An employee who believes the employer did not provide the 12 weeks of protected leave, failed to return the employee to the same or comparable position, failed to maintain benefits while out on the 12 weeks of leave, or took any adverse employment action against the employee for taking the leave, could pursue a claim against the employer seeking: compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees.

A 2015 study by insurance provider Hiscox regarding the cost of employee lawsuits under FEHA estimated that the cost for a small-to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately \$125,000.

Last year, SB 654, a similar yet narrower proposal was vetoed by Governor Brown. SB 654 mandated small employers to provide 6 weeks of leave, instead of 12 weeks as proposed in **SB 63**. In his veto message, Governor Brown stated:

“It goes without saying that allowing new parents to bond with a child is very important and the state has a number of paid and unpaid benefit programs to provide for that leave. I am concerned, however, about the impact of this leave particularly on small businesses and the potential liability that could result. As I understand, an amendment was offered that would allow an employee and employer to pursue mediation prior to a lawsuit being brought. I believe this is a viable option that should be explored by the author.”

Despite Governor Brown's request to consider options/amendments to limit litigation, **SB 63** continues to expose small employers to costly litigation that will simply overwhelm them.

California Already Imposes Numerous Family-Friendly Leaves of Absence on Employers: California is already recognized by the National Conference of State Legislatures as one of the most family-friendly states given its list of programs and protected leaves of absence, including: paid sick days, school activities leave, kin care, paid family leave program, pregnancy disability leave, and the California Family Rights Act. This list is in addition to the leaves of absence required at the federal level. In a recent study titled "The Status of Women in the States: 2015 Work & Family," California was ranked No. 2 for work and family policies that support workers keeping their jobs and also caring for their family members. Imposing an additional 12-week, mandatory leave of absence targeted specially at small employers is unduly burdensome.

For these reasons, we respectfully **OPPOSE SB 63** as a **JOB KILLER**.

cc: The Honorable Hannah-Beth Jackson
Camille Wagner, Office of the Governor
Gideon Baum, Senate Committee on Labor and Industrial Relations
Cory Botts, Senate Republican Caucus
Department of Industrial Relations
Labor and Workforce Development Agency
District Offices, Senate Committee on Labor and Industrial Relations

JB:ll