Date of Hearing: April 22, 2026

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 2098 (Kalra) – As Amended March 26, 2026

SUBJECT: Workers' compensation: medical treatment

SUMMARY: Provides job-protected leave for an injured worker to obtain medical treatment for an occupational injury during work hours, when necessary and in accordance with specified conditions. Specifically, **this bill**:

1) Requires that an employee make a reasonable effort to schedule treatment for their occupational injury outside of regular work hours, and clarifies that a reasonable effort shall not require a worker to consequentially delay treatment.

2) If treatment for an occupational injury occurs during work hours and the treatment is foreseeable, requires the employee to provide reasonable, advance notification to the employer, and if timing of the treatment is unforeseeable, requires the employee to provide notice of the treatment as soon as practicable.

3) Prohibits an employer from denying an injured employee's request for treatment pursuant to 2), unless business necessity would require treatment to occur at a different time or on a different day.

4) Defines business necessity, for purposes of 3), to mean an overriding legitimate business purpose such that denial of the request is necessary to the safe and efficient operation of the business, and for which there is no feasible alternative to denial of the request that would serve the business purpose.

5) Provides that an employer who denies a request in violation of 3), and who knows or should know that business necessity does not require the treatment to occur at a different time or on a different day, is guilty of a misdemeanor.

6) Specifies that leave taken pursuant to the bill shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), if the employee would have been eligible for that leave at the time the leave was taken.

7) Provides that any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee requested or took protected leave pursuant to the bill, is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

EXISTING LAW:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by

either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)

2) Provides that medical care and services that are reasonably required to cure or relieve the injured worker from the effects of an occupational injury shall be provided by the employer; and that in the case of neglect or refusal to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. (Labor (Lab.) Code Section 4600(a))

3) Specifies that when at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a qualified medical evaluator (physician), the employee is entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity (TD) for each day of wages lost in submitting to the examination. (Lab. Code Sec. 4600(e))

4) Requires a workers' compensation insurer, third-party administrator, or other entity that requires a treating physician to obtain either utilization review or prior authorization in order to diagnose or treat occupational injuries shall ensure the availability of those services from 9 a.m. to 5:30 p.m. Pacific standard time of each normal business day. (Lab. Code Sec. 4600.4(a))

5) Establishes within the workers' compensation system temporary and permanent benefits, referred to as disability indemnity, which offer wage replacement equal to two-thirds of a specified injured employee's average weekly earnings for up to 240 weeks while an employee is unable to work due to a workplace illness or injury. (Lab. Code Secs. 4653-4656)

6) Declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment. (Lab. Code Sec. 132a)

7) Provides that any employer who discharges, or threatens to discharge, or in any manner discriminates against an employee for filing or making known their intention to file a claim for compensation, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one-half, but no more than $10,000, together with costs and expenses up to $250; and further provides that the employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (Lab. Code Sec. 132a(1))

8) Provides that any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because the employee testified or made known their intentions to testify in another employee's case before the Workers' Compensation Appeals Board (WCAB), is guilty of a misdemeanor, and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (Lab. Code Sec. 132a(3))

9) Prohibits an insurer from advising, directing, or threatening an insured employer to discharge or in any manner discriminate against an employee for either filing a workers' compensation

claim or testifying before the WCAB in another employee's case, or making known their intention to do either. (Lab. Code Sec. 132a(2) & (3))

10) Subject to specific conditions, provides employees with up to 12 weeks of job-protected leave to recover from a serious medical condition, care for a loved one with a serious medical condition, or bond with a new child, pursuant to CFRA and the federal FMLA. (Government Code Secs. 12945.2 & 19702.3; 29 U.S.C. Sec. 2601, *et seq.*)

FISCAL EFFECT: Unknown.

COMMENTS:

1) *Purpose*. According to the author:

> In 2024, over 450,000 Californian workers suffered nonfatal occupational injuries and illnesses, including slips, falls, and exposures to harmful substances. Although many of these injuries were serious, requiring prompt medical treatment to reduce their duration and severity, numerous workers found themselves unable to access the care they needed. AB 2098 removes one of the barriers to this care by prohibiting employers from denying workers' requests to receive treatment for occupational injuries during work hours. This will ensure that injured Californian workers are not precluded from necessary care simply because they are unable to schedule medical appointments outside of work hours.

This bill is sponsored by the California Federation of Teachers (CFT).

2) *Workers' compensation and protected leave*. At its core, the workers' compensation system relies on a so-called "grand bargain." If a worker is injured on the job, the employer must pay for the worker's medical treatment, including monetary benefits if the injury is permanent. In exchange for receiving the guarantee of such treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. All employers are required to secure the payment of workers' compensation either by receiving approval from DIR to self-insure in accordance with substantial requirements, or by obtaining workers' compensation insurance coverage from an authorized insurer. The Labor Code explicitly asserts that it is the policy of the state to "vigorously enforce" this law.

Existing law requires an employer of an injured worker to provide any medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment that is reasonably required to cure or relieve the injured worker from the effects of their occupational injury, as prescribed by specified guidelines. Once a treatment plan is prescribed by the evaluating physician, that plan goes through a utilization review process wherein the employer or their insurer can modify or deny the treatment plan if they dispute that the treatment is medically necessary. If the injured worker disagrees with a utilization review decision denying or modifying the treatment plan based on medical necessity, the independent medical review (IMR) process tasks a neutral organization to evaluate the medical necessity of the treatment plan and make a final determination.

In many circumstances, an injured worker will not be able to carry out their occupational duties as a result of their injury, and must thus take leave during treatment until the condition resolves. California law provides certain protected medical leave options for circumstances in which a worker must recover from a serious health condition, including 12 weeks of

unpaid, job-protected leave each year pursuant to the California Family Rights Act, and a minimum of 40 hours, or five days, of paid sick leave offered by the employer. Federal law, pursuant to the Family and Medical Leave Act (FMLA), also provides up to 12 weeks of unpaid, job-protected leave each year for those who work for employers with over 50 employees. FMLA leave and CFRA leave run concurrently, and thus cannot be taken in succession.

In some cases, however, the worker may be healthy enough to return to work before all necessary treatment has been completed. Because most physicians and other medical practitioners operate primarily during normal business hours, this can make scheduling an appointment for essential, non-emergency medical care challenging for workers who also work during these hours.

This bill seeks to secure protected leave for injured workers who must schedule treatment for their occupational injury during work hours. CFT, who sponsor the bill, argue:

> Current law […] fails to clearly protect workers from retaliation or termination when occupational injury or illness requires non-emergency medical care that must be received during regular shift hours, no matter how much a worker tries to secure care after hours. This has led to CFT members being explicitly ordered to schedule their medical care outside of regular work hours, regardless of whether this is even an option.
>
> The end result is workers being forced to forego essential medical care, which can worsen their condition and potentially turn a temporary injury into a permanent one, or face losing wages, benefits, or employment simply for seeing a doctor during work hours. The fundamental inequity of the situation is further heightened by the fact that occupational injuries are at issue. Employees are injured at work and can then be punished by their employer with retaliation as a result of the injury, compounding the physical harm with a financial one. Injured workers deserve care and compassion, not retaliation and job insecurity.

3) *SB 1205 (Laird, 2024)*. In 2024, CFT sponsored SB 1205, which would have entitled an injured worker to temporary disability (TD) benefits for leave taken to attend a medical appointment for treatment of their occupational injury. That bill also would have also prohibited an employer from discharging or in any way discriminating against an employee for receiving treatment for an occupational injury during normal business hours or during the hours of the day when the employee is customarily at work.

This committee's analysis of SB 1205 raised several legal and logistical concerns with providing TD benefits for leave taken for medical treatment of an occupational injury after the worker is able to return to work. Among other concerns, that analysis stated:

> The purpose of TD is to temporarily provide wage replacement to injured employees who are unable to work due to an occupational injury. TD, as the name implies, is meant to be temporary and not ongoing. Once an employee is able to return to work, TD is no longer necessary, because they are back at work. Following a diagnosis from the injured worker's medical provider that the condition is not improving but not worsening, the condition is considered permanent and stationary and the employee would instead become eligible for permanent disability benefits. […]

It is unclear from the provisions of this bill how TD benefits would actually be claimed and what would happen in the event an employee has exhausted their available TD benefits. Additionally, under the provisions of this bill it is possible that employees will consistently be starting and stopping the receipt of TD benefits. For claims administrators this could present a significant administrative hurdle, for among other reasons, the fact that a notice has to be provided to an employee each time TD is started and stopped.

To rectify the various concerns, this committee recommended amendments to SB 1205 that eliminated the provision of TD for such leave, but maintained and clarified protections and conditions for leave taken for medical treatment for an occupational injury. The recommended amendments were substantially similar to the version of AB 2098 currently in print. The author accepted those amendments in committee, and the bill passed out of this committee 5-2. The bill later died on the Assembly Floor's inactive file.

AB 2098 differs from the version of SB 1205 that passed out of this committee in three main ways. First, AB 2098 allows an employer to deny a request for leave if business necessity requires that the treatment occur at a different time or on a different day. This was taken as an amendment to SB 1205 in the Assembly Appropriations Committee following passage out of this committee. Second, AB 2098 clarifies the definition of "business necessity," drawing from discrimination case law and existing statute. Finally, AB 2098 does not consider unlawful denial of a request for leave to be discrimination subject to Labor Code Sec. 132a, but instead separately penalizes the violation as a misdemeanor (i.e. the same penalty as for discrimination under Sec. 132a), and includes a separate violation, added to Sec. 132a, for discriminating on the basis of taking the protected leave provided by the bill.

4) *Violations, Labor Code 132a, and discrimination*. This bill establishes two separate types of violations: denial of a valid request for the specified leave when there is no legitimate business necessity to do so, and taking adverse action or otherwise discriminating against a worker because the worker has requested or taken leave to receive treatment for an industrial injury. The bill provides that both violations are punishable as a misdemeanor, with the latter violation also entitling the employee to reinstatement and to reimbursement for lost wages and work benefits caused by the acts of the employer.

The latter violation falls under Lab. Code Sec. 132a, which articulates penalties for forms of "discrimination against workers who are injured in the course and scope of their employment." Under existing law, Section 132a describes penalties for specific types of discrimination on this basis, including if an employer discharges, threatens to discharge, or in any manner discriminates against an employee because the employee has filed, intends to file, or has received a rating, award, or settlement for a workers' compensation claim. Section 132a similarly prohibits discrimination against an employee because they testified or intend to testify in another employee's case before the Workers' Compensation Appeals Board (WCAB), and prohibits an insurer from advising, directing, or threatening the insured employee to take any of these actions. This bill would add discriminating against an employee for requesting or taking leave for medical treatment for an occupational injury to that list.

A coalition of organizations representing public and private employers, including the California Chamber of Commerce (CalChamber), the California Coalition on Workers'

Compensation (CCWC), the California Hospital Association (CHA), and the California State Association of Counties (CSAC), who oppose the bill unless amended, argues:

> An employer that discriminates or retaliates against an employee for filing a workers' compensation claim is subject to penalties under a Section 132a claim. **AB 2098** amends Section 132a directly to say that any employer who discharges, threatens to discharge, or discriminates against an employee for taking leave to attend a medical appointment under the newly created Labor Code section shall be guilty of a misdemeanor and shall owe damages. While we agree there needs to be enforcement of obligations related to time off for appointments, we read this language as stating that any failure to provide time off is discrimination and a violation of Section 132a, which we believe is inappropriate. There is similar language in the proposed Section 4600.03(c)(2).

Staff notes that the bill does not seem to consider failure to provide time off discrimination, nor a violation of Section 132a. Rather, failure to provide time off would constitute a violation of Section 4600.03(c)(2), which specifically addresses denial of requests for leave. Such a violation can also be a misdemeanor if business necessity does not require the denial, but does not provide for damages, since the employee would not be losing wages or work benefits. The new provision added to Section 132a under this bill (Section 132a(a)(5)) deals specifically with adverse actions taken against the employee *because* they requested or took leave, such as firing, limiting opportunities for advancement, intentionally assigning less desirable work, etc. If leave is inappropriately denied but no adverse action that disadvantages the worker relative to their colleagues is taken against the worker, it would not seem to qualify as discrimination under the bill.

While case law supports a liberal construction of the term "discrimination" under Section 132a, it also clarifies that an action is only considered discrimination in violation of Section 132a if it disadvantages the employee *because of the industrial nature of the injury*. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (2003) [68 Cal. Comp. Cases 831; 30 Cal. 4th 1281]) Except in the unlikely circumstance where an employer denies a request for leave specifically *because* the treatment was for an occupational injury and not one that occurred outside the workplace, denial of a request for leave arguably does not fit this criterion. Rather, when an employer denies a request for leave to receive treatment during work hours, it is most likely that the employer would have denied the request regardless of whether the injury itself occurred in the workplace. Possibly for this reason, the bill does not consider denial of a request for leave to be discrimination or a violation of Section 132a, and instead provides a separate offense under Section 4600.03(c)(2).

The same opposing coalition also raises the concern that:

> Any error by a small business, belief that the employer could legitimately claim a business necessity for denying a request, or effort to ask the employee to reschedule an appointment subjects the employer to a misdemeanor and damages.

Under Section 4600.03(c)(2), the bill in print specifies that an employer who denies a request is only guilty of a misdemeanor if the employer "knows or should know that business necessity does not require the treatment to occur at a different time or on a different day." This means a reasonable belief that the employer could legitimately claim a business necessity should not result in a violation. That said, the bill in print does not contemplate circumstances in which the employee fails to comply with their obligations under the bill,

and the request is denied as a result. For instance, if the employee does not make a reasonable effort to schedule treatment outside of regular work hours, and this is known to the employer, the bill does not provide the employer with the ability to deny that request or suggest that such an effort to reschedule be made. Clarification that an employer can lawfully deny a request for leave if they have actual knowledge that the employee did not fulfill obligations under the bill may thus be warranted.

5) *Business necessity vs. undue hardship*. This bill prohibits an employer from denying a request for leave to receive treatment for an industrial injury, "unless *business necessity* would require the treatment to occur at a different time or on a different day." [Emphasis added.] The bill defines "business necessity" to mean "an overriding legitimate business purpose such that denial of the request is necessary to the safe and efficient operation of the business, and for which there is no feasible alternative to denial of the request that would serve the business purpose."

   This definition appears to draw from employment discrimination case law, which lays out a "business necessity defense" such that discrimination on the basis of a protected characteristic can be permissible if it is necessary for the safe and efficient operation of the business. The case of *Johnson Controls v. Fair Employment & Hous. Com* (1990) [218 Cal. App. 3d 517] laws out the test for the business necessity defense as follows:

   > To constitute a [business necessity defense], an employment practice with disproportionately adverse impact "must be shown to be necessary to safe and efficient job performance…." [Citation.] The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. [*Id.* at p. 541]

   The definition of "business necessity" used in this bill is consistent with this test, as well as the definition for "business necessity" used in the Fair Employment and Housing Act (FEHA), which protects against workplace discrimination, among other things. (Gov. Code Sec. 12900, *et seq.*; definition at Sec. 12951(b))

   The aforementioned coalition of employer groups who oppose the bill unless amended argues:

   > AB 2098 provides that <u>all</u> employers (regardless of size) must provide time off work for employees who are attending workers' compensation appointments. There is no time limit on the amount or frequency of leave. While there is an exception for a "business necessity," that exception is quite narrow.
   >
   > We believe the most comparable scenario to time off for medical appointments is reasonable accommodations under FEHA. There, because there is no set statutory time limitation on the amount of time off an employee may seek, FEHA provides employers with an ability to decline or modify a request where the time off would be an "undue hardship". A small employer, for example, would be able to make that showing more easily than a larger employer. […] We would prefer to see language more akin to the undue hardship standard for accommodation requests under FEHA.

   Various provisions of FEHA require that an employer make "reasonable accommodation" in the workplace for characteristics such as physical or mental disabilities, religious beliefs or

observance, and status as a victim of a qualifying act of violence. In these cases, FEHA generally does *not* require an employer to make an accommodation that would produce undue hardship to its operation.

FEHA defines "undue hardship" to mean:

> [A]n action requiring significant difficulty or expense, when considered in light of the following factors:
>
> (1) The nature and cost of the accommodation needed.
>
> (2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
>
> (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.
>
> (4) The type of operations, including the composition, structure, and functions of the workforce of the entity.
>
> (5) The geographic separateness or administrative or fiscal relationship of the facility or facilities. (Gov. Code Sec. 12926(u))

This definition is similar, but not identical, to the definition of "undue hardship" in federal law, which provides an exemption from accommodation requirements for disability under the Americans with Disabilities Act (ADA). (42 U.S.C. 12101, *et seq.*; definition in Sec. 12111(10)) In addition, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e, *et seq.*) allows denial of reasonable accommodation requests for religious belief or observance based on undue hardship, but does not provide a definition.

Fundamentally, the distinction between "business necessity" and "undue hardship" is one of direct cost consideration. Undue hardship allows for greater consideration of cost to the business (along with impact on the overall operation of the business) in its analysis, whereas business necessity considers only the safe and efficient operation of the business. Undue hardship also gives greater weight to the specific circumstances of the business, such as its size and overall financial status. This makes business necessity a comparatively higher bar to meet than undue hardship.

This does not, however, mean that any cost to the business can constitute an undue hardship. In *Groff v. Dejoy* (2023) [600 U.S. 447], with respect to undue hardship under Title VII, the United States Supreme Court opined:

> [U]nder any definition, a hardship is more severe than a mere burden. So even if Title VII said only that an employer need not be made to suffer a "hardship," an employer could not escape liability simply by showing that an accommodation would impose some sort of additional costs. Those costs would have to rise to the level of hardship, and

> adding the modifier "undue" means that the requisite burden, privation, or adversity must rise to an "excessive" or "unjustifiable" level. [*Id.* at p. 468]

In practice, business necessity is generally applied as the standard for workplace policies or actions that would otherwise be considered discriminatory, whereas undue hardship is generally applied as the standard for declining a request for what would otherwise be considered a reasonable accommodation.

This bill raises issues of both accommodation and discrimination. A request for leave to receive treatment during work hours when treatment cannot be received outside of work hours is, in a sense, a request for a reasonable accommodation for the disability resulting from the occupational injury. As such, denial of the request could be considered akin to denial of a reasonable accommodation, and the applicable case law would arguably be more instructive.

On the other hand, Section 132a specifically deals with discrimination related to a workers' compensation claim, in this case in the event adverse action is taken against the worker for exercising this right to leave for receiving treatment. Accordingly, a business necessity defense would likely already be available for a discrimination claim under the new provision added to Section 132a by this bill.

Because "business necessity" in the context of this bill is linked to denial of a request for leave, and *not* to discrimination based on exercising the right to leave, "undue hardship," as defined in Gov. Code Sec. 12926(u), may be a more fitting standard. Should the bill pass out of this committee, as the bill moves through the legislative process, the author may wish to consider amending the bill to allow an employer to deny a request for leave only if it would cause undue hardship, rather than if business necessity requires moving treatment to a different time or day.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Labor Unions, Afl-cio
California Professional Firefighters
California School Employees Association
California Teachers Association
Cft – a Union of Educators & Classified Professionals, Aft, Afl-cio
Peace Officers Research Association of California (PORAC)

Oppose Unless Amended

American Property Casualty Insurance Association
California Association of Joint Powers Authorities (CAJPA)
California Chamber of Commerce
California Coalition on Workers Compensation
California Hospital Association
California State Association of Counties (CSAC)
Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California (RCRC)

Analysis Prepared by: Landon Klein / INS. / (916) 319-2086