

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON INSURANCE
Lisa Calderon, Chair
AB 575 (Papan) – As Amended March 9, 2023

SUBJECT: Paid family leave

SUMMARY: Makes several changes to how individuals can access benefits under the state Paid Family Leave (PFL) program. Specifically, **this bill:**

- 1) Expands the PFL program to allow individuals to access PFL benefits for the purpose of bonding with a minor child within one year of assuming responsibilities of a child in loco parentis.
- 2) Deletes the restriction that an individual is not eligible for PFL benefits if another family member is ready, willing, and able and available for the same period of time in a day to provide the required care.
- 3) Deletes the authorization for an employer to require an employee to take two weeks of vacation leave before accessing PFL benefits.

EXISTING LAW:

- 1) Establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance and State Disability Insurance (SDI) programs. (Unemployment Insurance Code (UIC) Section 301)
- 2) Establishes the SDI program as a partial wage-replacement plan funded through employee payroll deductions that is available (through the SDI and PFL programs) to eligible individuals who are unable to work due to sickness or injury of the employee (including pregnancy), the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child. (UIC Sections 2601-3308)
- 3) Establishes the PFL program within the SDI program for the provision of wage replacement benefits for up to eight weeks within a 12-month period to workers for the following reasons: (UIC Sections 3301-3303)
 - a) To care for a seriously ill family member.
 - b) To bond with a new child entering the family by birth, adoption, or foster care placement.
 - c) To participate in a qualifying event because of a spouse, registered domestic partner, parent, or child's military deployment to a foreign country.
- 4) Provides that an individual is not eligible for PFL benefits if another family member is ready, willing, able, and available for the same period of time in a day to provide the required care. (UIC Section 3303.1)

- 5) Allows an employer to require an employee to take up to two weeks of earned but unused vacation leave prior to the employee accessing PFL benefits. (UIC Section 3303.1)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Purpose.* According to the author:

Over 20 years ago, California became the first state in the nation to enact a paid family leave program. California Paid Family Leave (PFL) provides workers with partial wage replacement when they take leave from work to provide care for a family member in specific circumstances. While California has led the nation in implementing paid family leave and has taken meaningful steps to make the program more equitable, workers still face barriers in accessing the PFL benefits that they contribute to. Assembly Bill (AB) 575 will remove unnecessary barriers for individuals seeking to access their paid family leave benefits and better enable them to be there for children in times of transition and hardship. These updates will allow workers to access the support they need without placing any additional requirements on California employers.

- 2) *Background.* PFL was enacted in 2002 as an expansion to the SDI program to extend disability compensation to individuals who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new minor child. California was the first state in the nation to implement a PFL benefit, with benefit payments beginning on July 1, 2004. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty.

PFL provides up to eight weeks of the 60-70% wage replacement. Starting January 1, 2025 workers will be eligible for 70-90% wage replacement. According to EDD's SDI Statistical Information, for the first six months of 2022 the average weekly benefit amount was \$821.

Many confuse the PFL program (which provides only wage replacement during leave) with the job protection guarantees in the federal Family & Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). However, the changes to PFL benefits in this bill do not affect these job protection laws.

- 3) *Discussion.* This bill seeks to address limitations in the PFL program, including restrictions on when an individual can access PFL benefits to bond with a minor child, how many individuals can access PFL benefits to care for a family member, and requirements related to when an individual can first access PFL benefits. According to the Center on Budget and Policy Priorities, PFL benefits have the biggest impact on low-wage workers, workers of color, and other marginalized groups.¹ Therefore, arguably the changes proposed by this bill would also have the biggest impact on these communities by making it easier for certain individuals to access PFL benefits.

¹ "A National Paid Leave Program Would Help Workers, Families." Kathleen Romig and Kathleen Bryant, Center on Budget and Policy Priorities (April 27, 2021) https://www.cbpp.org/research/economy/a-national-paid-leave-program-would-help-workers-families#_ftnref18

PFL already provides rights to individuals that stand in loco parentis, primarily a person who stood in loco parentis to an individual when they were a child is included in the definition of “parent.” (UIC Section 3302). This has the effect of meaning an individual can take time off using PFL to care for someone that stood in loco parentis when the individual was a child and vice versa. However, in loco parentis rights do not extend to bonding leave for purposes of PFL. Currently, individuals can only take time off to bond with a minor child upon birth, placement in foster care, or adoption. Therefore, when an individual assumes responsibility for a child without a former foster care placement or adoption they are not able to use PFL for purposes of bonding leave. For example, if a relative or grandparent assumes care of a child without formally adopting them, the relative or grandparent would not be eligible to use PFL to bond with the child and make the transition easier. This bill would address this issue by allowing an individual to bond with a minor child within one year of assuming responsibilities in loco parentis.

Additionally, only one family member at a time is currently allowed to access PFL benefits in order to care for an individual. For example, if a minor child is hospitalized only one of the parents would be able to access PFL benefits to be with and care for the child. Conversely, when an elderly parent may need help and care only one family member would be able to access PFL benefits to care for the elderly parent. This bill would remove the restriction that allows only one family member at a time to access PFL benefits.

Finally, an employer is currently allowed to require an employee to use two weeks of accrued vacation time before they can access PFL benefits. Supporters of this bill, including the Consumer Attorneys of California, argue this restriction prevents employees from freely accessing benefits they pay for, because PFL benefits are entirely funded by employees through a payroll withholding. Additionally, in practice many employees would likely use available vacation time before accessing PFL benefits given that these benefits are full wage replacement and PFL benefits are only partial wage replacement. By deleting the provision allowing employers to require employees to use vacation leave before accessing PFL benefits, this bill leaves the decision of whether to use vacation benefits before accessing their PFL benefits entirely with the employee.

4) *Related Legislation.*

- a) AB 518 (Wicks), pending before this Committee, expands the definition of “family member” for purposes of the PFL program to allow workers to take time off to care for a seriously ill individual related by blood or whose close association with the employee is the equivalent of a family relationship.
- b) AB 1041 (Wicks) Chapter 748, Statutes of 2022, expanded the list of individuals for which an employee can take leave under the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014.
- c) SB 951 (Durazo) Chapter 878, Statutes of 2022, revised the formula for the computation of SDI and PFL benefits.
- d) SB 1058 (Durazo), Chapter 317, Statutes of 2022, required EDD to collect demographic data, including race and ethnicity data and sexual orientation and gender identity data, for individuals who claim disability benefits under the SDI and PFL programs.

- e) SB 83 (Committee on Budget and Fiscal Review) Chapter 24, Statutes of 2019, beginning July 1, 2020, extended from six to eight weeks the maximum duration of PFL benefits individuals may receive.
- f) SB 1123 (Jackson) Chapter 849, Statutes of 2018 expanded the PFL program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces.
- g) SB 63 (Jackson) Chapter 686, Statutes of 2017 prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child.
- h) SB 770 (Jackson), Chapter 350, Statutes of 2013 expanded the definition of family to include in-laws, siblings and grandparents.

REGISTERED SUPPORT / OPPOSITION:

Support

AARP California
California Breastfeeding Coalition
California Coalition on Family Caregiving
California Employment Lawyers Association
California Immigrant Policy Center
California WIC Association
California Women's Law Center
California Work & Family Coalition
Caring Across Generations
Center for Law and Social Policy (CLASP)
Centro Legal De LA Raza
Children Now
Citizens for Choice
Colage
Consumer Attorneys of California
Equal Rights Advocates
Family Caregiver Alliance (FCA)
Family Values @ Work
Family Violence Appellate Project
Futures Without Violence
Grace - End Child Poverty in California
Human Impact Partners
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Jtmw LLC
Justice in Aging

Legal Aid At Work
Mujeres Unidas Y Activas
NARAL Pro-choice California
National Council of Jewish Women Los Angeles
National Domestic Workers Alliance
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Public Counsel
Rising Communities (formerly Community Health Councils)
San Diego County Breastfeeding Coalition
Thai Community Development Center
The Restaurant Opportunity Center of The Bay
UFCW - Western States Council
Warehouse Worker Resource Center
Watsonville Law Center
Women Organized to Make Abuse Non-existent (woman Inc.)
Working Partnerships USA
Worksafe

Opposition

None on file.

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086