





## UPDATED JOB KILLER

June 20, 2023

TO: Members, Senate Judiciary Committee

**SUBJECT: AB 524 (WICKS) DISCRIMINATION: FAMILY CAREGIVER STATUS  
OPPOSE/JOB KILLER – AS AMENDED MAY 18, 2023**

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE AB 524 (Wicks)** which has been labeled a **JOB KILLER**. **AB 524** creates a broad new protected class under FEHA: employees with family caregiver status. This broad group would include any employee who “contributes” to the care of any person of their choosing. This would encompass essentially every worker and creates an automatic basis for an individual in that new classification to challenge any adverse employment action, opening up a floodgate of litigation. Further, this new classification would be used to essentially require employers, including small businesses, to accommodate all caregiving needs beyond what is already required under existing law or else they may face a discrimination claim. Between litigation exposure and forced accommodations, **AB 524** will increase the cost of doing business in California and the costs of goods and services.

### **“Family Caregiver Status” Is Broadly Defined and Is a Subjective Determination**

**AB 524** proposes to add any individual with “family caregiver status” as a new protected class under FEHA. That term is extremely broad. It is defined to include any worker who “contribut[es] to the care of one or more family members.” A “family member” is not limited to an actual family member. Rather, it also includes any person who is designated by the employee. This could include a neighbor or an employee’s child’s friend. Every employee could arguably fall into the category of a family caregiver. Proponents of **AB 524** claim that adding family caregiver status to FEHA is a simply a “clarification” of existing laws, but that is not true. **AB 524** is a significant expansion of FEHA and has been rejected by this Legislature for the last two years.

Because whether an employee contributes to the care of another is a subjective determination, the employer has no ability to dispute an employee designating themselves as having family caregiver status. Any dispute would open the employer up to costly litigation. Further, adding this broad, new classification to the list under FEHA would limit an employer’s ability to enforce employment policies, including attendance policies. Any action taken by the employer could be challenged as discrimination based on “family caregiver status.” For example, even if the employee did not request time off as an accommodation and simply took time off, whenever they wanted, scheduled or unscheduled, the employer could not discipline or terminate the employee for the time off without risking potential litigation under FEHA for discrimination based on family caregiver status. This will significantly limit an employer’s ability to address discipline issues in the workplace, maintain stability, and eradicate any issues without costly litigation.

### **AB 524 Creates a De Facto Accommodation Requirement in Addition to Existing Leave Laws**

As discussed above, any action taken by an employer could be challenged as discrimination based on family caregiver status. If an employee requests a schedule change or time off that is denied and they

subsequently violate an attendance policy or are terminated for refusing to work a different schedule, they will surely sue alleging discrimination.

This has happened in California courts regarding the issue of “associational disabilities.”<sup>1</sup> In *Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016), the court of appeals stated that it believes FEHA includes protections for associated disabilities. The plaintiff in that case had requested a schedule change due to his son’s disability. The schedule change was not approved and the plaintiff refused to work the other schedule, resulting in termination. On appeal, the plaintiff did not raise whether he was entitled to a reasonable accommodation. Instead, his claim was that he had been discriminated against. The court agreed that the discrimination claim could move forward even if there was no statutory duty to accommodate because the accommodation issue was “significantly intertwined” with the prohibition against discrimination. *Id.* at 1038-39, 1046.

Trial attorneys will surely read **AB 524** as requiring the same outcome: rejecting a caregiver’s accommodation request is discriminatory even if there is no explicit legal duty to provide an accommodation. Due to the threat of litigation, employers will be forced to treat this law as effectively requiring accommodation. This is especially true for small employers who do not have access to legal counsel or cannot afford to fight litigation and will end up paying a costly settlement.

There are many existing laws with parameters that provide employees time to act as a caregiver. Labor Code Section 230.8 provides 40 hours of leave for situations where a school or childcare center is unavailable. The California Family Rights Act (CFRA) provides up to 12 weeks of leave to care for a family member or other designated person of their choice. CFRA was broadened just this year to include “designated persons” (non-family members) in the list of people for whom the employee can take time off. The Healthy Workplace Healthy Family Act and related “kin care” statutes also allow sick time to be used to care for someone else. Any employer who retaliates against an employee for using these leaves is liable for unlawful retaliation. If the Legislature finds these leaves insufficient, rather than imposing new burdens on employers it should provide more flexible work options to workers by revising California’s overly rigid wage and hour laws that prohibit workplace flexibility.

#### **AB 524 Exposes Employers, Including Small Businesses, to Costly Litigation Due to Its Private Right of Action**

FEHA includes a private right of action for any alleged discrimination against a protected classification. Liability includes compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees. A 2017 study by insurance provider Hiscox regarding the cost of employee lawsuits estimated that the cost for a small to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately \$160,000, which was a \$35,000 increase from Hiscox’s study just two years earlier. This amount, especially for a small employer, reflects the financial risk associated with defending a lawsuit under FEHA. In 2016, Hiscox found that U.S. companies had a 10.5% chance of having an employment charge filed against them. For California, that percentage was **56.5%**. According to the Civil Rights Department’s (CRD)<sup>2</sup> annual reports, thousands of complaints are filed every year, with more than 70% of those employees choosing to immediately pursue civil litigation instead of having the DFEH investigate their claim.

For these and other reasons, we respectfully **OPPOSE AB 524** as a **JOB KILLER**.

Sincerely,



Courtney Jensen, Fernandez Cervantes Government Affairs  
On behalf of California Chamber of Commerce

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<sup>1</sup> There are opposing views as to whether FEHA protects “associational disabilities”, which is when the employee is associated with someone, like a family member, who is disabled.

<sup>2</sup> Formerly the Department of Fair Employment and Housing (DFEH)



Acclamation Insurance Management Services (AIMS), Dominic Russo  
Allied Managed Care (AMC), Dominic Russo  
Associated General Contractors, Bret Gladfelty  
Association of California Healthcare Districts, Sarah Bridge  
Auto Care Association, Aaron Lowe  
Brea Chamber of Commerce, Adam Pryor  
California Apartment Association, Embert P. Madison, Jr.  
California Association of Joint Powers Authorities, Faith Borges  
California Association of Sheet Metal and Air Conditioning Contractors National Association, Chris Walker  
California Association of Winegrape Growers, Michael Miiller  
California Bankers Association, Melanie Cuevas  
California Beer and Beverage Distributors, Victoria G. Horton  
California Building Industry Association, Nick Cammarota  
California Business Properties Association, Matthew Hargrove  
California Chamber of Commerce, Courtney Jensen  
California Employment Law Council, Mike Belote  
California Farm Bureau, Bryan Little  
California Food Producers, Ben Ebbink  
California Grocers Association, Leticia Garcia  
California Hispanic Chambers of Commerce, Julian Canete  
California Hospital Association, Gideon Baum  
California Hotel & Lodging Association, A.J. Rossitto  
California Landscape Contractors Association, Sandra Giarde  
California Manufacturers and Technology Association, Lawrence Gayden  
California New Car Dealers Association, Les Swizer  
California Railroads, Don Maddy  
California Rental Housing Association, Sid Lakireddy  
California Restaurant Association, Katie Davey  
California Retailers Association, Sarah Moo Pollo  
California State Council of the Society for Human Resource Management (CalSHRM), Michael S. Kalt  
Carlsbad Chamber of Commerce, Bret Schanzenbach  
CAWA – Representing the Automotive Parts Industry, Rodney Perini  
Chino Valley Chamber of Commerce, Zeb Welborn  
Citrus Heights Chamber of Commerce, Diane Ebbitt-Riehle  
Civil Justice Association of California, Jaime Huff  
Clovis Chamber of Commerce, Greg Newman  
Coalition of California Chambers – Orange County, Benjamin Medina  
Coalition of Small and Disabled Veteran Businesses, Jeffrey Langlois  
Construction Employers' Association, Michael Walton  
Corona Chamber of Commerce, Anthony Maldonado  
Danville Area Chamber of Commerce, Judy Lloyd  
El Dorado Hills Chamber of Commerce, David Butler  
Encinitas Chamber of Commerce, Sherry Yardley  
Exeter Chamber of Commerce, Tina Rice  
Family Business Association of California, Robert Rivinius  
Family Winemakers of California, Pete Downs  
Flasher Barricade Association (FBA), Kenneth Johnston  
Folsom Chamber of Commerce, Bill Romanelli  
Fontana Chamber of Commerce, Phil Conthran  
Fountain Valley Chamber of Commerce, Memory Bartlett  
Fremont Chamber of Commerce, Matt Senekeremian  
Fresno Chamber of Commerce, Scott Miller  
Garden Grove Chamber of Commerce, Henry Rogers  
Gilroy Chamber of Commerce, Victoria Valencia  
Glendora Chamber of Commerce, Joe Cina  
Greater Bakersfield Chamber of Commerce, Kaelyn Peterson  
Greater Coachella Valley Chamber of Commerce, Diana Soto

Greater Conejo Valley Chamber of Commerce, Adam Haverstock  
Greater High Desert Chamber of Commerce, Mark Creffield  
Greater Riverside Chambers of Commerce, Ana Martin  
Greater San Fernando Valley Chamber of Commerce, Nancy Hoffman Vanyek  
Hollywood Chamber of Commerce, Chris Micheli  
Housing Contractors of California, Bruce Wick  
Imperial Valley Regional Chamber of Commerce, Bari Smith Bean  
Kern County Hispanic Chamber of Commerce, Jay Tamsi  
La Cañada Flintridge Chamber of Commerce, Pat Anderson  
La Verne Chamber of Commerce, Leah Skinner  
Laguna Niguel Chamber of Commerce, Scott Alevy  
Livermore Valley Chamber of Commerce, Dawn P. Argula  
Lodi Chamber of Commerce, Pat Patrick  
Long Beach Area Chamber of Commerce, Jeremy Harris  
Los Angeles Area Chamber of Commerce, Maria S. Salinas  
Mission Viejo Chamber of Commerce, Dave Benson  
Murrieta/Wildomar Chamber of Commerce, Patrick Ellis  
National Federation of Independent Business, Tim Taylor  
Newport Beach Chamber of Commerce, Steve Rosansky  
North Orange County Chamber, Theresa Harvey  
North San Diego Business Chamber, Manuel Gomez  
Oceanside Chamber of Commerce, Scott Ashton  
Official Police Garages Los Angeles, Eric Rose  
Orange County Business Council, Connor Medina  
Palos Verdes Peninsula Chamber of Commerce, Marilyn Lyon  
Paso Robles Chamber of Commerce, Amy Russell  
Pleasanton Chamber of Commerce, Steve Van Dorn  
Plumbing-Heating-Cooling Contractors Association of California, Richard Markuson  
Public Risk Innovation, Solutions and Management (PRISM), Jen Hamelin  
Rancho Cordova Area Chamber of Commerce, Diann H. Rogers  
Redondo Beach Chamber of Commerce, Henry Rogers  
San Diego Regional East County Chamber of Commerce, Rick Wilson  
San Gabriel Valley Economic Partnership, Nayiri E Baghdassarian  
San Juan Capistrano Chamber of Commerce, Benjamin Medina  
Santa Ana Chamber of Commerce, Timothy Jemal  
Santa Barbara South Coast Chamber of Commerce, Dustin Hoiseth  
Santa Clarita Valley Chamber of Commerce, Ivan Volschenk  
Santa Maria Valley Chamber of Commerce, Glenn Morris  
Santa Rosa Metro Chamber of Commerce, Ananda Sweet  
Santee Chamber of Commerce, Kristen Dare  
Simi Valley Chamber of Commerce, Kathi Van Etten  
South Bay Association of Chambers of Commerce, Henry Rogers  
South County Chambers of Commerce, Kathy McCorry  
Southwest California Legislative Council, Erik McLeod  
Torrance Area Chamber of Commerce, Donna Duperron  
Tulare Chamber of Commerce, Donnette Silva Carter  
Vista Chamber of Commerce, Rachel Beld  
Walnut Creek Chamber of Commerce, Bob Linscheid  
West Ventura County Business Alliance, Nancy Lindholm  
Western Carwash Association, David A. Murillo  
Western Growers Association, Matthew Allen  
Wilmington Chamber of Commerce, Dan Hoffman  
Wine Institute, Noelle Cremers  
Yorba Linda Chamber of Commerce, Alex Hernandez

cc: Legislative Affairs, Office of the Governor  
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CJ:am