

**SB 654 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICE: PARENTAL LEAVE
OPPOSE – JOB KILLER**



More To Sea



UPDATED

JOB KILLER

August 16, 2016

The Honorable Hannah-Beth Jackson
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

**SUBJECT: SB 654 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICE: PARENTAL LEAVE
OPPOSE – JOB KILLER**

The California Chamber of Commerce and the organizations listed above **OPPOSE SB 654**, as amended August 11, 2016, which has been identified as a **JOB KILLER**, as it will significantly harm small employers in California with as few as 10 employees by adding to the existing burden under which they already struggle, as well as potentially require larger employers to provide 10 months of protected leave.

SB 654 Will Overwhelm Small Employers:

SB 654 targets small employers with only 10 employees 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 654 Creates a 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 654** will add another 12-weeks of leave for the same employee, totaling 7 months of protected leave. Such an extensive period of time for a small employer with a limited workforce to accommodate is unreasonable.
- (2) **SB 654 Imposes a Mandatory Leave, with No Discretion to the Employer:** As a “protected leave,” with a threat of litigation, **SB 654** mandates the small employer to provide 3 months of leave. The leave under **SB 654** 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.
- (3) **SB 654 Imposes Additional Costs on Small Employers That Are Struggling with the Increased Minimum Wage:** Even though the leave under **SB 654** is not “paid” by the employer, that does not mean the small employer will not suffer added costs. While 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 given the limited duration of employment; 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.
- (4) **SB 654 Exposes Small Employers to Costly Litigation:** **SB 654** 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, or maintain benefits while out on the 12-weeks of 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. This amount, especially for a small employer, reflects the financial risk associated with defending a lawsuit under FEHA, such as the litigation created by **SB 654**, and the ability to leverage an employer into resolving or settling the case regardless of merit.

California Already Imposes a List of 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 their 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. Imposing another 12-week leave of absence, targeted specifically at small employers, is simply too much for employers to bear.

SB 654 Creates the Potential for Larger Employers to Provide 10 Months of Protected Leave: California employers with 50 or more employees already have to provide the following leave for employees:

Up to 4 months – pregnancy disability leave/Family and Medical Leave Act (FMLA);

PLUS (+)

3 months – child bonding leave under FMLA/California Family Rights Act (CFRA)

To the extent the new leave under **SB 654** is interpreted through case law or regulation differently than the leave under CFRA, that lack of conformity could create the opportunity for two separate 12-week leaves of absence for employers with 50 or more employees, ***in total, a potential leave of absence of 10 months.***

While **SB 654** seeks to acknowledge and address this issue in proposed Section 12945.6(b) by stating that the total amount of leave an employee can receive under this bill, CFRA and FMLA is 12-weeks in a 12-month period, this does not fix the situation. California cannot preempt or limit the application of federal law under FMLA. Additionally, proposed Section 12945.6(c) appears to nullify any limitation on total leave taken as set forth in Section 12945.6(b), as it explicitly states an employee is entitled to take CFRA or FMLA leave, assuming the employee is qualified for that leave.

For these reasons, we are **OPPOSED** to **SB 654** as a **JOB KILLER**.

Sincerely,

California Chamber of Commerce
Agricultural Council of California
American Petroleum and Convenience Store Association
Associated Builders and Contractors of California
Associated Builders and Contractors - San Diego Chapter
CalAsian Chamber of Commerce
California Ambulance Association
California Association for Health Services at Home
California Association of Joint Powers Authorities
California Business Properties Association
California Farm Bureau Federation
California Hotel and Lodging Association
California Landscape Contractors AssociationS

California League of Food Processors
California Manufacturers and Technology Association
California Professional Association of Specialty Contractors
California Restaurant Association
California Retailers Association
California Travel Association
California State Association of Counties
Chambers of Commerce Alliance of Ventura and Santa Barbara County
Civil Justice Association of California
Culver City Chamber of Commerce
El Centro Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Fresno Area Chamber of Commerce
Greater Merced Chamber of Commerce
League of California Cities
National Federation of Independent Business
North Orange County Chamber of Commerce
Oxnard Chamber of Commerce
Palm Desert Area Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Redondo Beach Chamber of Commerce
Santa Maria Chamber of Commerce Visitor & Convention Bureau
South Bay Alliance of Chambers of Commerce
The Greater Conejo Valley Chamber of Commerce
Western Carwash Association
Western Electrical Contractors Association
Western Growers Association
Yuba-Sutter Chamber of Commerce

cc: Camille Wagner, Office of the Governor
District Office, The Honorable Hannah-Beth Jackson