CalChamber
CALIFORNIA CHAMBER OF COMMERCE

January 12, 2017

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

SUBJECT: SB 62 (JACKSON) UNLAWFUL EMPLOYMENT: FAMILY CARE AND MEDICAL LEAVE
OPPOSE – JOB KILLER

Dear Senator Jackson:

The California Chamber of Commerce respectfully **OPPOSES** your **SB 62 (Jackson),** which has been identified as a **JOB KILLER**, as it will significantly expand the type of individuals for which employees can take leave under the California Family Rights Act (CFRA), allowing California employees to take up to 24 weeks/6 months of protected leave in a 12-month period. Governor Brown vetoed a similar proposal in 2015.

SB 62 Expands the Amount of Protected Leave an Employee May Take Up to 24 Weeks:

SB 62 expands the family members for whom an employee may take a 12-week protected leave of absence to care for to include a grandparent, a grandchild, and siblings. The initial intent of CFRA was to provide a balance between an individual's work life and personal life. However, this proposed change would certainly disrupt that balance and negatively impact California employers. Given the fact that these proposed individuals under **SB 62** are not covered under the corresponding and similar leave provided by the federal Family Medical Leave Act (FMLA), it will potentially provide a California employer with an obligation to provide up to 24 weeks of protected leave. Specifically, under **SB 62**, an employee could utilize his/her 12-weeks of CFRA to care for the serious medical condition of a grandparent, who is not a family member covered under FMLA, and therefore would not trigger FMLA leave. Upon returning, the employee would still be entitled to another 12-week protected leave of absence under FMLA.

Governor Brown already vetoed prior legislation (SB 406) in 2015 due to this very issue:

> *"I support the author's efforts to ensure that eligible workers can take leave to care for a seriously ill family member. The expansion provided in this bill, however, creates a disparity between California's law and the Federal Medical Leave Act and, in certain circumstances, could require employers to provide employees up to 24 weeks of family leave in a 12 month period."*

SB 62 Allows Employees to Take 24 Weeks of Protected Leave in One-Hour Increments:

Leave under CFRA and FMLA does not have to be taken in one lump sum. An employee can take CFRA and FMLA in as small of increments as one hour at a time. For example, an employee can leave an hour early every day for a qualifying reason until CFRA/FMLA leave one week each month, etc. until the leave is exhausted. This already creates a significant burden on employers with regard to managing employee work

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schedules. Expanding CFRA and providing California employees with up to 24 weeks of leave that can be taken in one-hour increments significantly exacerbates this existing problem.

SB 62 Expands Employment Litigation Under CFRA:

CFRA includes a private right of action with the opportunity to obtain compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. This private right of action creates costly litigation for employers, even when employers take reasonable steps to address abuse under CFRA. For example, in *Richey v. Autonation*, 60 Cal.4th 909 (2015), an employee took CFRA leave from his employer for 12 weeks due to his own medical condition. However, while on "medical leave," the employee opened and worked at his own restaurant. The employer fired the employee and the employee sued the employer for retaliation for taking CFRA. Although the employer ultimately prevailed in the lawsuit, the employer incurred the costs of litigation for over six years.

Other examples include: *McDaneld v. Eastern Municipal Water District Board,* 109 Cal.App.4th 702 (2003) (finding against an employee who sued his employer for violation of CFRA after the employee was terminated because he was found golfing and performing intermittent sprinkler installation and repair while he had requested time off to care for his father); *Rankins v. Verizon Communications Co.*(unpublished) 2007 WL 241154 (finding against the employee who sued the employer for violation of CFRA when the employee was terminated by the employer for submitting false medical certification/letter for CFRA leave); *Holley v. Waddington North America, Inc.* (unpublished) 2012 WL 883134 (finding against the employee who sued the employer for interference with his rights under CFRA, even though the employer provided the employee with over 14 months of leave).

By expanding the qualifying reasons to take leave under CFRA, as **SB 62** proposes, it also expands an employer's exposure to costly litigation.

Employers Already Accommodate Employees' Requests for Time Off:

Despite allegations otherwise, employers regularly accommodate employees' personal needs with regard to caring for family members without being forced to do so by law or the threat of litigation. Employers engage in these accommodations as a benefit to their employees to make sure the employees can balance their personal lives with their work. Employers do not need to be threatened with litigation, which includes the potential for punitive damages, for accommodations they are already providing.

California Already Has an Extensive List of Protected Leaves of Absence:

California already has extensive family-related protected leaves of absence including the following: *Paid Sick Leave* (applicable to all employers and includes employee and family members); *Kin Care* (applicable to all employers and allows employees to use half of paid time off for family members' illnesses); *California Family Rights Act* (applicable to employers with 50 or more employees and provides 12-week leave of absence for employee's medical condition, family members' medical condition, or to bond with a new child); *Pregnancy Disability Leave* (applicable to employers with 5 or more employees and provides 4 months of protected leave that is in addition to CFRA's 12 weeks); *School Activities Leave* (applicable to employers with 25 or more employees for 40 hours per year to attend school related activities of a child). 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.

For these reasons, we respectfully **OPPOSE** your **SB 62** as a **JOB KILLER**.

Sincerely,

Jennifer Barrera
Senior Policy Advocate

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