

January 12, 2017

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

**SUBJECT: SB 63 (JACKSON) UNLAWFUL EMPLOYMENT PRACTICE: PARENTAL LEAVE
OPPOSE – JOB KILLER**

Dear Senator Jackson:

The California Chamber of Commerce respectfully **OPPOSES** your **SB 63 (Jackson)**, which has been identified as a **JOB KILLER**, as it targets and will significantly harm small employers in California with as few as 20 employees by adding to the existing burden under which they already struggle. Governor Brown vetoed a similar, but narrower proposal just last year.

SB 63 Will Overwhelm Small Employers With a New 12-Week Mandatory Leave of Absence:

SB 63 targets small employers with as few as 20 employees within a 75-mile radius 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 63 Creates a Combined 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 63** will add another 12 weeks of leave for the same employee, **totaling 7 months of potential protected leave**. Such an extensive period of time is unreasonable for a small employer with a limited workforce to accommodate.
- (2) **SB 63 Could Impact Worksites That Have Substantially Less than 20 Employees:** **SB 63** is applicable to any employer that has 20 or more employees within a 75-mile radius. Employees at multiple worksites are aggregated together to reach the employee threshold under this proposal. Accordingly, a worksite that only has 5 employees will be required to accommodate this mandatory leave if there are other worksites in a 75-mile radius that have enough employees to reach the 20 employee threshold. The worksite of the employee who takes the leave is the location that will be impacted by the protected leave. Exposing employers with limited employees at a worksite to this extensive mandatory leave will create a hardship.
- (3) **SB 63 Imposes a Mandatory Leave, with No Discretion to the Employer:** As a “protected leave,” with a threat of litigation to enforce it, **SB 63** mandates the small employer to provide 12 weeks of leave. The leave under **SB 63** 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.
- (4) **SB 63 Imposes Additional Costs on Small Employers That Are Struggling with the Increased Minimum Wage:** Even though the leave under **SB 63** is not “paid” by the employer, that does not mean the small employer will not suffer added costs. While the employee is 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; 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.

- (5) **SB 63 Exposes Small Employers to Costly Litigation:** SB 63 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, failed to maintain benefits while out on the 12 weeks of leave, or took any adverse employment action against the employee for taking the 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.

Last year, SB 654, a similar yet narrower proposal was vetoed by Governor Brown. SB 654 mandated small employers to provide 6 weeks of leave, instead of 12 weeks as proposed in SB 63. In his veto message, Governor Brown stated:

It goes without saying that allowing new parents to bond with a child is very important and the state has a number of paid and unpaid benefit programs to provide for that leave. I am concerned, however, about the impact of this leave particularly on small businesses and the potential liability that could result. As I understand, an amendment was offered that would allow an employee and employer to pursue mediation prior to a lawsuit being brought. I believe this is a viable option that should be explored by the author.

Despite Governor Brown's request to consider options/amendments to limit litigation, SB 63 continues to expose small employers to costly litigation that will simply overwhelm them.

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. 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. Imposing an additional 12 week, mandatory leave of absence targeted specially at small employers is unduly burdensome.

For these reasons, we respectfully **OPPOSE** your **SB 63** as a **JOB KILLER**.

Sincerely,



Jennifer Barrera
Senior Policy Advocate

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

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