

## **JOB KILLER**

March 22, 2021

The Honorable Wendy Carrillo  
California State Assembly  
State Capitol, Room 4167  
Sacramento, CA 95814

**SUBJECT: AB 1179 (CARRILLO) EMPLOYER PROVIDED BENEFIT: BACKUP CHILDCARE  
OPPOSE/JOB KILLER – AS INTRODUCED FEBRUARY 18, 2021**

Dear Assembly Member Carrillo:

The California Chamber of Commerce respectfully **OPPOSES** your **AB 1179 (Carrillo)**, which has been labeled a **JOB KILLER**, because it will add a significant new cost on employers to pay for employees' childcare and exposes these employers to costly litigation under the Labor Code Private Attorney General Act (PAGA). **AB 1179** would mandate employers pay for up to 60 hours of childcare benefits per employee per year.

### **California Employers Cannot Afford Yet Another Mandated Increase in Benefits:**

**AB 1179** imposes another California-only employee requirement, by forcing employers to pay for up to 60 hours of childcare for each employee. While the bill is ostensibly applicable only to large employers with 1,000 or more employees, those employees don't necessarily need to be located in California for this law to apply. Employers with a limited workforce in California would still be exposed to this new mandate if they have a larger workforce in other states, further encouraging these employers to leave California.

While one more paid benefit may not seem significant in isolation, this mandate must be viewed in the context of all of California's other leaves and paid benefits. California has numerous protected, overlapping leaves and benefits requirements. Despite the economic struggles that businesses have faced in light of COVID-19, the Legislature has only added more overlapping leaves over the last year, and as this bill demonstrates, continues to propose even more:

- Paid sick leave – minimum of three days of leave for an employee or family member's illness or preventative care. Legislation introduced this year would increase the minimum number of paid sick days from 3 to 5 days
- CalOSHA Emergency Temporary Standard – imposed new 10-day paid leave on all employers for all employees who have COVID-19 or may have been exposed, even if the exposed employee never contracts COVID-19; leave has no pay cap. Also mandates employer pay for mandatory COVID-19 testing for employers
- FFCRA and AB 1867 – imposed 80-hour paid leave requirement on all employers in 2020 for various COVID-19-related reasons
- Workers' Compensation – expanded presumption for COVID-19 so that employee may be entitled to paid leave and benefits under workers' compensation system
- SB 95 – The Legislature recently passed budget trailer bill language that imposes a second 80-hour paid leave requirement in 2021, retroactive to January 1, 2021, for various COVID-19-related reasons
- Organ and Bone Marrow Donor leave – 30 days paid leave + 30 additional days of unpaid leave
- Voting leave – two hours of paid leave for all statewide elections

In addition to the above paid leaves, there are a multitude of unpaid protected leaves that increase costs on employers because the employer must either shift the work to other existing employees on short notice, which leads to overtime pay, or be understaffed. One of those leaves includes up to 40 hours each year to care for a child whose school or childcare provider is unexpectedly unavailable. These leaves include:

- CFRA – 12-week leave for the employee’s own illness or to care for a family member. CFRA was expanded last year to cover additional family members so that it no longer runs concurrently with FMLA
- FMLA – 12-week leave for the employee’s own illness or to care for a family member
- Pregnancy Disability leave – 4 months of leave
- School/Childcare leave – expanded in 2016 so that employees can take up to 40 hours per year to care for child whose school or childcare provider is unavailable, enroll a child in school or childcare, or participate in school or childcare activities
- School Appearance leave – uncapped leave for employee who needs to take time off to appear at school due to a student disciplinary action
- Crime /Domestic Abuse/Sexual Assault/Stalking Victim leave – uncapped leave for victim or victim’s family member to attend related proceedings
- Jury/Witness leave – uncapped leave for jury duty or to serve as a witness
- Military Service leave – uncapped leave provided for military personnel; benefits must continue for at least 30 days. Ten days of leave for military spouses
- Drug Rehabilitation/Adult Literacy classes – uncapped leave for employees who wish to participate in alcohol or drug rehabilitation programs or adult literacy programs
- Volunteer Civil Service leave – uncapped leave to serve as a volunteer firefighter, peace officer, or emergency rescue personnel

There are several bill proposals this year to expand these leaves and benefits. This list also does not include the dozens of local ordinances that have broader paid and unpaid leave requirements than those listed above. The continued mandates placed on California employers to provide employees with numerous rights to protected leaves of absences and other benefits is simply overwhelming, and unmatched by any other state.

### **Childcare Benefits Should be Paid by the State:**

We share your concern about the availability of childcare as an important support for working families. A robust, quality and affordable childcare network is not only crucial for the development of young children, but also essential for the millions of working parents with young children. Without viable childcare solutions, and reopened schools, working parents will have a difficult time returning to work, especially as unemployment is concentrated in industries that provide in-person services.

The issue is not whether childcare should be robustly available, but who is responsible for paying for this service. Employers cannot be the safety net for this pandemic or for addressing the ills of society generally. It is also unnecessary to place this mandate on the shoulders of employers.

The recently-passed federal ARPA provided \$15 billion nationwide for the Child Care and Development Block Grant (CCDBG) program for essential workers, and \$24 billion for a childcare stabilization fund, both available through fiscal year 2021. According to the Center for Law and Social Policy (CLASP), California can expect to receive about \$3.76 billion from these two sources alone.

Should this source of funds be inadequate, California State government is enjoying \$22 billion in budget reserves, before an expected \$15 billion revenue windfall in May, with about \$26 billion in expected aid just for the state from the federal ARPA. The past two federal stimulus bills allocated funds to increase the Child Tax Credit and Child and Dependent Care Tax Credits in 2021 to help families offset childcare costs as well as funds to help prevent childcare centers from closing permanently. The Legislature could provide similar relief for its residents and help reduce the costs that childcare centers must charge to break even instead of shifting that cost to private employers and local governments. As businesses struggle to maintain operations and avoid additional layoffs while they recover from COVID-19 closures, now is not the time to place yet another burden solely on the shoulders of California’s employers.

## **AB 1179 Imposes New Administrative Burdens on Employers:**

**AB 1179** would function as a complex benefits accrual system similar to paid sick leave. Employers must meticulously track these accruals and uses, keep records for three years, and post notices of the benefits in the workplace. The accrual rates and rates of pay are different for different employees depending on whether they are non-exempt or exempt and how many hours an employee works per week. The employer must also report the available hours balances on employee wage statements. Employers face penalties for any good faith error.

**AB 1179** would also permit local ordinances to adopt broader requirements and does not include any language preempting ordinances that are different from the state law. This opens the door for cities to create a myriad of different requirements that employers must follow. For example, with paid sick leave there are a significant number of ways local ordinances conflict with state's Healthy Workplace Healthy Families Act (the Act):

- **Accrual Method:** Even just the basic methods of accruing sick leave differ. The local ordinances have more complex options for accrual methods. For example, San Francisco's paid sick leave law states that the employer may front load any sum of paid sick leave at the start of each employment year, calendar year, or 12-month period, so long as the employee can accrue additional paid sick leave after working enough hours to have accrued the amount allocated upfront. If that is not confusing enough, Emeryville, Los Angeles, San Diego, and Santa Monica all differ from San Francisco—some saying that, if the employer utilizes a front loading option, the employer must provide 40 hours at the start of the year, while others require 48 hours and others specify an amount of paid sick leave equal to the applicable accrual cap (i.e., 40, 48, or 72 hours) depending on each local city ordinance's accrual cap.
- **Accrual Use Cap:** The accrual caps are not much clearer. Berkeley, Emeryville, Oakland, San Francisco, and Santa Monica all base the accrual cap on the number of employees the employer has and each city has a different employee threshold. For example, in Berkeley, if you have 24 or fewer employees, the annual accrual cap is 48 hours; however, if you have 25 or more employees, then the annual accrual cap is 72 hours. On the other hand, in the neighboring city of Oakland, the annual accrual cap is 40 hours for 9 or fewer employees and 72 hours for 10 or more employees. Thus, if the employer has locations throughout California, the employer will need to comply with and keep track of conflicting methods just for the annual accrual cap.
- **Use Increments:** The Act and most local ordinances state that an employer cannot require that paid sick leave be used in increments longer than 2 hours. However, Berkeley differs in that the employer cannot require use in increments longer than an hour for the initial hour, or longer than *15 minutes* thereafter. Oakland and San Francisco do not allow employers to require that paid sick leave be used in increments longer than 1 hour and Santa Monica does not address use increments at all.
- **Covered Employees:** This is where the local ordinance issue becomes even more burdensome on employers who have employees that work in different cities. For instance, in order for the paid sick leave laws of Berkeley, Emeryville, Los Angeles, Oakland, San Diego, and Santa Monica to apply to the employee, the employee only needs to work in the city for 2 hours in one calendar week and be entitled to minimum wage. That means, for some employees who travel for work, the employer must keep track of how long the employees are in each city. If the employee is there for at least 2 hours, then that employee is entitled to the protections provided by the specific local ordinance. In San Francisco, any employee is entitled to paid sick leave as long as they work 56 hours or more in San Francisco during one calendar year.

If **AB 1179** becomes law and cities or counties enact their own ordinances, an employer would need to contend with not only different paid sick leave laws but also different paid childcare benefits laws.

**AB 1179 Prohibits Employers from Verifying Use of Benefits Paid:**

Further, while **AB 1179** purports to only cover “backup” childcare benefits, there is nothing in the bill that would prevent an employee from using the 60 hours of paid benefits each year for primary childcare costs. Section 2953(b) provides that an employer may not require an employee to provide documentation verifying use of their first 60 hours. Therefore, an employer is not allowed to verify that the employee is indeed using the leave for backup childcare needs instead of primary care.

Even where documentation may be required, such as with paid sick leave, many employers still find that employees use their allotted paid sick leave benefits for non-qualifying reasons. Allowing employers to require documentation will help curb at least some abuse that would arise from this law.

**AB 1179 Establishes New PAGA Liability That Will Cripple Businesses:**

Because **AB 1179** establishes a new section of the Labor Code, any violation would subject a business to liability under the Labor Code Private Attorneys General Act (PAGA). PAGA liability also applies even for minor or technical violations and requires no showing of harm to the employees. Therefore, covered employers will be subject to costly PAGA liability even for minor mistakes in complying with this new requirement. Employers cannot afford PAGA liability over even minor errors at the worst possible time, when they are attempting to reopen and get people back to work.

**Instead of Burdening Employers with More Costs, The Legislature Should Provide More Flexible Work Options that Benefit Employers and Employees:**

Like many of the bills and regulations that have been introduced over the past year, **AB 1179** once again tries to make California’s employers pay for all of an employee’s personal needs outside of work instead of considering alternative solutions that could benefit both employers and employees. Instead of imposing new costs on employers, the Legislature should reform California’s unnecessarily rigid wage and hour laws to allow employees flexibility in their weekly schedules that would allow workers more time to care for children. Presently, California’s inflexible Labor Code and steep penalty system dissuade employers from allowing employees to have more flexibility during their workday. Added costs such as split shift premiums, daily overtime, meal and rest break premiums, and a broad expense reimbursement requirement make workplace flexibility too expensive for employers to consider. Many employers are hesitant to continue to offer telecommuting after the pandemic because these wage and hour laws were not designed with telecommuting employees in mind. Any failure to adhere to certain rules immediately triggers penalties and attorney’s fees under various Labor Code provisions, including PAGA.

Employees want flexibility, whether it be through a more flexible daily schedule, alternative workweek schedule, or the ability to continue to telecommute after the conclusion of the pandemic. Updating these laws to provide more opportunities for employees to telecommute is an important issue that benefits both employees and employers and is very popular among California voters. In a recent survey conducted by the California Chamber of Commerce, 86% of polled voters agree (42% strongly) that the state’s labor laws should be changed so employees working at home have more flexibility and 92% agree (55% strongly) with policies that would make it easier for businesses to allow employees to telecommute. Providing more flexibility to employees would ease the burdens of childcare for many employees.

For these and other reasons, we respectfully **OPPOSE** your **AB 1179** as a **JOB KILLER**.

Sincerely,



Ashley Hoffman  
Policy Advocate

cc: Stuart Thompson, Office of the Governor  
Dina Cervantes, Office of Assembly Member Carrillo  
Lauren Prichard, Assembly Republican Caucus