



AB 995 (GONZALEZ) PAID SICK DAYS: ACCRUAL AND USE

FLOOR ALERT

JOB KILLER

May 21, 2021

TO: Members, California State Assembly

**SUBJECT: AB 995 (GONZALEZ) PAID SICK DAYS: ACCRUAL AND USE
OPPOSE/JOB KILLER – AS INTRODUCED FEBRUARY 18, 2021**

The California Chamber of Commerce and the organizations listed above respectfully **OPPOSE AB 995 (Gonzalez)**, which has been labeled as a **JOB KILLER**. **AB 995** would impose significant costs on small businesses by amending the Healthy Workplaces, Healthy Families Act (the Act) to increase the number of paid sick days employers are required to provide from 3 days to 5 days, increase the cap that employers can place on paid sick days from 6 days to 10 days, and increase the number of paid sick days an employer can roll over to the next year from 3 days to 5 days. Those businesses that can afford to offer more than three days of sick leave are doing so, but not all businesses can absorb that cost right now. This is especially true given that Governor Newsom just signed SB 95, which imposes a burdensome new 80-hour COVID-19 related leave requirement that is retroactive to January 1st. Businesses struggling to keep their doors open or hire back employees who were laid off due to COVID-19 closures need relief from this seemingly endless increase in leave mandates.

California Employers, Especially Small Employers, Cannot Afford Yet Another Mandated Increase in Benefits:

It is estimated that about 44% of small businesses are at risk of shutting down permanently as a result of the COVID-19 pandemic. Small business revenue is down more than 30% in California, with some sectors being down more than 70%. The Governor and the Legislature have both acknowledged that now is the time to invest in our businesses, especially our small businesses, to keep them from closing their doors or needing to result to more layoffs to stay afloat.

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 number of overlapping leaves has grown over the last year and continues to grow:

- Paid sick leave – Minimum of three days of leave for an employee or family member's illness or preventative care. There is a bill proposal this year to 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 variety of different unpaid 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. 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 apply to small business and to cover additional family members so that it no longer runs concurrently with FMLA. Employees can use this leave in smaller 1-2 hour increments if they so choose
- 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. These leaves add significantly to the cumulative financial impact of the cost of doing business in California. For example, unscheduled absenteeism costs roughly \$3,600 per year for each hourly employee in this state. (See “The Causes and Costs of Absenteeism in The Workplace,” a publication of workforce solution company Circadian.) The continued mandates placed on California employers to provide employees with numerous rights to protected leaves of absences and other benefits is simply overwhelming.

Some argue that small businesses are receiving state and federal financial aid as a result of the pandemic, so these increased mandates should not be cause for concern. That is not true. For example, only some small business will qualify and be able to get funds offered by the Small Business COVID-19 Relief Grant Program. If, hypothetically, half the grants are distributed to the top tier, one-third to the middle tier and one-sixth to the lowest tier, then a total of about 150,000 businesses will receive some grant. That is a small fraction of the millions of struggling small businesses in California. There were 300,000 applications requesting more than \$4 billion during the first round of grants offered by the state in 2020. Also, those grants are capped at between \$5,000 and \$25,000. Even small businesses that took out PPP loans in 2020 larger than \$25,000 are still concerned about making payroll. Further, many small businesses are having to pay state taxes on those loans as if they were income.

The Senate floor analysis of SB 87, the \$2 billion grant program, confirmed that these programs alone cannot remedy the financial devastation caused by COVID-19 on our business community: “These grants will help some businesses in the short-term. However, even businesses that receive these grants, or receive aid through other programs, will need sustained support to continue operating. The grants proposed here are small compared to the magnitude of the revenue losses suffered in the past year, particularly for the larger businesses and the large nonprofit cultural institutions. In addition, large businesses across many sectors were excluded from this program but may also need financial assistance.”

This proposed financial burden is especially hard on small businesses given the fact that the employer has no discretion to deny paid sick leave or ask an employee to modify the leave to accommodate the

employer's business operations or other employees who may be out of work on other California leaves of absence. If an employer denies, interferes with, or discourages the employee from taking the leave, the employer could be subject to costly litigation. Now is not the time to increase leave mandates.

Expanding Paid Sick Leave Will Impose More Administrative Burdens on Employers:

The Act's complex accrual system already poses an administrative burden to employers and **AB 995** will increase that burden. 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.

One of the most burdensome aspects of paid sick leave is that the statute permits local ordinances to adopt broader requirements and does not include any language preempting ordinances that are different from the state law. By amending the state law, employers must once again analyze how it operates in conjunction with local ordinances that have different accrual methods, accrual caps, use increments, and documentation requirements.

California Should Incentivize Paid Sick Leave, Not Mandate It:

Given the cumulative costs and existing protected leaves of absence with which California employers are already struggling to comply, California should refrain from mandating additional sick days and instead should provide incentives to employers to offer more expansive sick day benefits by reducing costs in other areas.

For these and other reasons, we respectfully **OPPOSE AB 995** as a **JOB KILLER**.

Sincerely,



Ashley Hoffman
Policy Advocate
California Chamber of Commerce

Associated General Contractors
Association of California School Administrators
Auto Care Association
California Association for Health Services at Home
California Association of School Business Officials
California Association of Winegrape Growers
California Beer and Beverage Distributors
California Building Industry Association
California Farm Bureau
California Grocers Association
California Landscape Contractors Association
California Manufacturers and Technology Association
California Restaurant Association
California Trucking Association
CAWA – Representing the Automotive Parts Industry
Civil Justice Association of California
Construction Employers' Association
Encinitas Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Fremont Chamber of Commerce
Fresno Chamber of Commerce

Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Housing Contractors of California
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles Chapter of the National Tooling and Machining Association
National Federation of Independent Business
North Orange County Chamber
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
San Fernando Valley Chapter of the National Tooling and Machining Association
San Francisco Bay Area Chapter of the National Tooling and Machining Association
San Gabriel Valley Economic Partnership
Santa Ana Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
South Orange County Economic Coalition
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Valley Industry & Commerce Association
Western Carwash Association
Western Growers Association
Wine Institute

cc: Stuart Thompson, Office of the Governor
Shubhangi Domokos, Office of Assembly Member Gonzalez
Megan Lane, Assembly Committee on Labor and Employment
Lauren Prichard, Assembly Republican Caucus

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