

ALERT

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Senate to Consider Unnecessary Mandate

Paperwork Violation Poses No Employee Risk



OPPOSE

employer's written Injury and Illness Prevention Program.

AB 2895 (R. Hernández; D-West Covina) requires employers to keep a written copy of their workplace injury and illness prevention program (IIPP) at each worksite with more than three employees, make it available for inspection by any employee upon request, provide a written copy to employee representatives making a request, and separately inform employees of these rights.

Current law requires all employers to have an IIPP, which is meant to provide a roadmap for the employer to implement

The Senate will consider a California Chamber of Commerce-**opposed** bill that imposes new unnecessary and burdensome duties on employers related to the

procedures to ensure employee safety in the workplace. The Division of Occupational Safety and Health (Cal/OSHA) reviews the IIPP to ascertain whether the program has been implemented properly.

AB 2895 confuses the purpose of the IIPP with the training and communications an employer develops as an outgrowth of its IIPP to keep workers safe.

In a departure from current practice making Cal/OSHA the exclusive enforcer of safety regulations, AB 2895 sets up a new enforcement scheme, creating injunctive action that could force employers to go to court for what amounts to a paperwork violation that presents no risk of injury or harm to employees.

Serious enforcement measures are now and should continue to be reserved for serious violations that put employees at risk of serious injury. A need for the bill has not been demonstrated.

An electronic or written copy of the IIPP available upon request should suffice

See Senate to Consider: Page 6

Streamlining Review for Critical Projects Passes Senate



SUPPORT

passed the Senate this week.

SB 734 (Galgiani; D-Stockton) streamlines development by creating an expedited California Environmental Quality Act (CEQA) review process for "leadership projects," which are selected by the Governor and which meet certain criteria, including a minimum financial threshold and net zero greenhouse gas emissions.

In doing so, SB 734 encourages the expedited approval and construction of critical development and infrastructure projects while also ensuring that such projects meet robust environmental standards.

SB 734 strikes a workable and appropriate balance between job creation and environmental protection.

Conditions

Specifically, SB 734 permits the Governor to certify a leadership project for streamlining if the project meets the following conditions:

- will result in a minimum investment of \$100 million in California;

See Streamlining: Page 6

A California Chamber of Commerce-**supported** bill that expedites the environmental review process for leadership projects meeting certain criteria

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Labor Law Corner

State Expands Protections for Assistive/Support Animals in Workplace



Erika Pickles
HR Adviser and
Employment Law
Counsel

My employee asked to bring his rat with him to work. He says the rat is a “support animal” that helps him deal with his anxiety. Can a rat be a “support animal”?

Yes. Given the broad definition of support animals, employers should not rule out any animal as a possible support animal—even if it is not an animal you

would typically think of as one that may provide “support” to an employee.

Under both federal and California law, allowing disabled employees to have assistive animals in the workplace may be a form of reasonable accommodation.

California law is broader than federal law in the rights it gives disabled employees to bring assistive animals into the workplace. That protection increased when the Department of Fair Employment and Housing regulations were amended effective April 1, 2016.

The April 1, 2016 amendments made two key changes to the regulations governing assistive animals in the workplace. The amendments:

- Expanded the definition of “support animal”; and
- Removed the requirement that assistive animals must be trained.

What Is a Support Animal?

California law defines “assistive animal” as “an animal that is necessary as a reasonable accommodation for a person with a disability.” (California Code of Regulations, Title 2, Section 11065(a).)

A support animal is one type of assistive animal; other types include guide dogs, signal dogs, and service dogs.

Generally speaking, a support animal provides support to a person with a disability. California disability law did not recognize support animals as a type of reasonable accommodation for employees with disabilities until December 2012, when the law was changed to specifically include these types of animals within the definition of assistive animal.

The definition of what constitutes a support animal under California law was expanded with the April 1 amendments. A “support animal” is an animal “that provides emotional, cognitive, or other similar support to a person with a disability, including, but not limited to, traumatic brain injuries or mental disabilities, such as major depression.” (California Code of Regulations, Title 2, Section 11065(a)(D).)

Support animals are not limited to dogs—they can include any other animal that provides emotional, cognitive, or other support to an employee with a disability.

Also, California law formerly required that assistive animals be “trained to provide assistance for the employee’s disability.” That requirement was eliminated with the April 1 amendments. Assistive animals, including support animals, no longer need to have any special training.

Requests for Support Animals

Requests from employees to bring assistive or support animals into the workplace should be handled the same way as any other requests for accommodation: employers should engage in a timely, good faith interactive process with the employee regarding the request for accommodation.

Employers may require that an employee requesting an assistive or support animal provide:

- Documentation from the employee’s health care provider of the need for the animal (for example, why the animal is necessary as an accommodation to allow the employee to perform the essential functions of the job).

- Confirmation that the animal will behave appropriately in the workplace and meet the minimum standards for assistive animals. (California Code of Regulations, Title 2, Sections 11065(a), 11069(e).)

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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CalChamber Calendar

Education Committee:

September 8, La Jolla

Water Committee:

September 8, La Jolla

Fundraising Committee:

September 8, La Jolla

Board of Directors:

September 8–9, La Jolla

International Breakfast:

September 9, La Jolla



Employers Must Begin Electronic Filing of UI Taxes, Payroll Tax on January 1



Labor Law

Beginning January 1, 2017, employers with 10 or more employees will be required to electronically submit employment tax returns, wage reports, and payroll tax deposits to the Employment

Development Department (EDD).

This requirement will expand to all employers beginning January 1, 2018.

Unemployment Insurance

AB 1245 (Cooley; D-Rancho Cordova, Statutes of 2015) requires electronic reporting for unemployment insurance (UI) reports submitted to the EDD. It also requires employers to remit contributions for UI taxes by electronic funds transfer.

Any employer required under existing law to electronically submit wage reports and/or electronic funds transfer to the EDD will remain subject to those requirements. **EDD has FAQs** on the e-file and e-pay mandate for employers.

The EDD encourages employers to enroll now in **e-Services for Business** so they can start reporting online before this mandate begins.

For more information about the e-file

and e-pay mandate, please visit: www.edd.ca.gov/EfileMandate.

Benefits

Benefits of electronic filing and payments, according to EDD:

- Increases data accuracy.
- Protects data through encryption, which is safer and more secure than paper forms.
- Reduces paper and mailing costs.
- Eliminates lost mail.
- Faster processing of returns and payments.

e-Services for Business

Employers can use **e-Services for Business** to comply with the e-file and e-pay mandate. e-Services for Business is a fast, easy, and secure way to manage employer payroll tax accounts online. With e-Services for Business, employers can:

- Register for an employer payroll tax account number.
- File returns and reports.
- Make payroll tax deposits and pay other liabilities.
- View and update account information.
- And more.

Waiver

This mandate contains a waiver provi-

sion for employers who are unable to electronically submit employment tax returns, wage reports, and payroll tax deposits.

The EDD began accepting waiver requests from employers in July. To request a waiver, employers must complete and submit the E-file and E-pay Mandate Waiver Request (DE 1245W).

Here are the ways to obtain a DE 1245W:

- Download the DE 1245W from the EDD website at www.edd.ca.gov.
- Contact the Taxpayer Assistance Center at (888) 745-3886.
- Visit an **Employment Tax Office**.

Waiver requests can be submitted by fax to (916) 255-1181 or by mail to: Employment Development Department, Document and Information Management Center, P.O. Box 989779, West Sacramento, CA 95798-9779

Employers will be notified by mail if their waiver is approved or denied. An approved waiver will be valid for one year. Upon the expiration of the approval period, an employer must start to electronically file and pay, or submit a new waiver request to avoid a noncompliance penalty.

Penalties

Penalties will be incurred for noncompliance with this mandate. To avoid the penalties, enroll in e-Services for Business.

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

Leaves of Absence. CalChamber. August 16, Sacramento; October 6, Pasadena. (800) 331-8877.

HR Boot Camp. CalChamber. September 7, San Diego; September 22, Sacramento. (800) 331-8877.

Independent Contractor or Employee? Costly Mistakes Employers Make. CalChamber. September 15, Webinar. (800) 331-8877.

Business Resources

Grow California Business Summit. Governor's Office of Business and Economic Development (GO-Biz). August 17, Sacramento. (916) 322-0694.

Expand Your Business in China Through E-Commerce. GO-Biz. August 23, Long Beach. (916) 322-0645.

International Trade

Conference on Industrial Development in Saudi Arabia. U.S.-Saudi Arabian Business Council. August 25, Beverly Hills. (703) 962-9300.

Golden Autumn Trade Fair. Bay Area Council. September 12-13, Gulou District, Nanjing, China. (415) 946-8743.

Global Cultural and Business Practices. Port of Los Angeles. September 14, Santa Clarita. (310) 732-7765.

SBA Export Lender Roundtable. U.S. Small Business Administration. September 20, San Jose.

G-20Y Summit. G-20Y Association. September 21-25, St. Moritz, Switzerland.

2016 Public Forum on "Inclusive Trade." World Trade Organization. September 27-29, Geneva, Switzerland.

Diplomacy Begins Here: Northern California. September 30, Oakland. Northern California World Trade Center and Global Ties San Francisco. (415) 528-3541.

2016 Sima-Sipsa International Ag Expo. U.S.-Algeria Business Council. October 4-7, Algiers, Algeria. (703) 418-4150.

Think Canada Global Business Summit. Think Canada. October 19-20, Niagara Falls, Canada.

NLRB Expands Ability of Temp Workers to Organize



The National Labor Relations Board (NLRB) has overturned long-established precedent to hold that temporary workers supplied by a staffing agency may be put in the same bargaining unit as a company's regular employees, without the consent of both employers.

The decision in *Miller & Anderson, Inc.* follows on the heels of a decision last year (*Browning-Ferris Industries of California, Inc.*) that redefined the long-standing test for determining joint-employer status.

Uncertainty

The latest decision magnifies uncertainties for employers with temporary/contingent workers.

In the past, if an employer, for instance, a soda manufacturer, had both direct and temporary workers, a union would have to get permission from both the soda manufacturing company and the temp agency before it could organize the regular employees and the temporary employees into a single bargaining unit.

Now, the NLRB has done away with the employer consent requirement. As the *Wall Street Journal* noted: "firms that use temp agencies or subcontractors (e.g., cleaning, security, hospitality) could be required to collectively bargain with workers that they use only for short durations. Even after the temp workers leave, the company is stuck with the union and its labor contract."

The dissent in *Miller & Anderson* pointed out the uncertainty that employers now face: the expansive decision "will

only make it more difficult for parties to anticipate whether, when or where this new type of multi-employer/nonemployer bargaining will be required."

Browning-Ferris

The uncertainty from the *Miller* decision is compounded by last year's *Browning-Ferris* decision on the joint employment standard. In that case, the NLRB departed from the long-standing joint-employer test it previously used, which focused on the extent a company exercised direct control over working conditions before the company could be found to be a joint employer.

The NLRB switched to a broader test that allowed companies to be potentially liable for labor violations even if they had only indirect or unexercised control over employment conditions.

The issue before the NLRB was whether waste services company *Browning-Ferris Industries of California, Inc.* (BFI) and staffing agency *Leadpoint Business Services* were joint employers of about 240 full-time, part-time and on-call temporary workers who worked at the BFI facility and whom the union petitioned to represent. BFI employed about 60 people for its waste facility and used other temporary workers supplied by *Leadpoint*.

In the BFI decision issued in August 2015, the NLRB said "reserved authority" that is not actually exercised also will be considered relevant and found that BFI was a joint employer with *Leadpoint*. The NLRB said it still will look at whether there is "sufficient control over the work of the employees to qualify as a joint employer with another employer, but there will not be a requirement that the control be exercised directly and immediately."

The NLRB issued a statement noting that the previous standard hadn't kept pace with changing workplace and economic conditions, as more than 2.87 million of the nation's workers were employed through temporary agencies in August 2014.

After the NLRB determined that BFI was a joint employer, the union prevailed at a representation election. Testing the NLRB's decision, BFI did not recognize the union. The union then filed an unfair labor practices charge. In January, the NLRB found that BFI and *Leadpoint* violated the National Labor Relations Act, and BFI appealed.

The appeal was filed in the U.S. Court of Appeals for the D.C. Circuit.

Employer groups, including the U.S. Chamber of Commerce, are supporting BFI's appeal.

Consequences

The effect of these decisions is to make it easier for unions to organize workplaces that use a lot of temporary workers.

In fact, the dissent to the majority decision in the BFI case pointed out that the change "will subject countless entities to unprecedented new joint-bargaining obligations that most do not even know they have, to potential joint liability for unfair labor practices and breaches of collective-bargaining agreements, and to economic protest activity, including what have heretofore been unlawful secondary strikes, boycotts and picketing."

Employers with significant contingent workforces may wish to consult with legal counsel on the impact of these NLRB decisions.

Staff Contact: Gail Cecchetti Whaley

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CalChamber Offers Employers Guidelines for Political Communications to Employees

A brochure available online from the California Chamber of Commerce offers employers a concise overview of the do's and don'ts of communicating with employees about ballot measures.

The brochure, "Guidelines for Political Communications to Employees," points out that informing employees and stockholders about the impact of ballot measures (as well as proposed state legislation and regulations) is within the employer's rights as a business owner—as long as the communication is done the right way.

Caution

The brochure emphasizes there should be **NO PAYCHECK STUFFERS**—employers cannot put any political messages in or on employees' payroll envelopes.

Moreover, there should be no coercion, no rewarding or punishing employees for their political activities or beliefs (or threatening to do so).

Acceptable

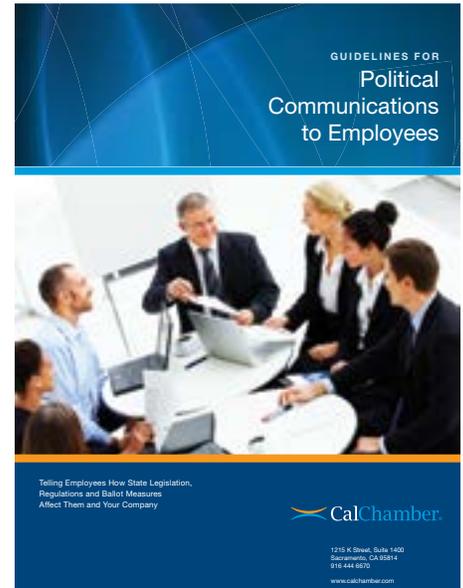
Employers can communicate with their employees, stockholders and their families about the company's support of or opposition to state legislation, regulations or ballot measures.

Also permissible is encouraging employees, stockholders and their families to support or oppose state legislation, regulations or ballot measures.

Political messages can be communicated to the business's own employees and their families through such means as: internal mail systems (separate from payroll distribution), email systems, regular mail, bulletin boards, phone bank messages or employee meetings.

There is a distinction between the handling of *internal* communications (to employees, stockholders and their families) and *external* audiences (such as nonstockholder retirees, outside vendors, customers and passersby).

For more guidelines on political communications to employees, see the brochure at www.calchamber.com/



guidelines. Two formats are available for download: an easy-to-print 8.5"x11" layout and one set up for printing on legal-size paper.

Employers Can Help Encourage Employees to Register Now, Vote in Fall



In the days leading up to the June primary, a surge in voter registration led to 72.29% of eligible California citizens being registered to vote.

Ultimately, however, just 47.72% of regis-

tered voters cast a ballot in the primary, and a sizable percentage (58.92%) voted by mail, according to the office of the Secretary of State.

Employers interested in encouraging employees to participate in the political process can find sample messages, posters and more at caprosperity.org. The California Prosperity Project is a nonpartisan effort to provide greater education and awareness about candidates and their

positions on issues important to California businesses, their employees and their families.

It is part of the Prosperity Project, a joint venture among employers, state organizations, business groups (including the California Chamber of Commerce) and the Business-Industry Political Action Committee (BIPAC) to encourage greater business and employee participation in the political and public policy process.

October 24 is the deadline to register to vote in the November election.

Persons who register to vote in California must be:

- A United States citizen;
- A resident of California;
- 18 years of age or older on Election Day;
- Not currently imprisoned or on parole for the conviction of a felony;

- Not currently found to be mentally incompetent by a court of law.

To register to vote, a prospective voter must complete a brief voter registration application on paper or online. An online link is available in the grassroots action center at calchambervotes.com.

Applications also are available through the website of the Secretary of State, county elections offices, any Department of Motor Vehicles office, and many post offices, public libraries, and government offices. To have a paper application mailed to you, call your county elections office or the Secretary of State toll-free voter hotline at (800) 345-VOTE.

Voter registration cards and voting materials are available in English, Chinese, Hindi, Japanese, Khmer, Korean, Spanish, Tagalog, Thai, and Vietnamese.
Staff Contact: Cathy Mesch

Senate to Consider Unnecessary Mandate

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regardless of whether the copy is in written form at the location; however, that is not allowed by this bill.

New Requirement

Further, the employer would be required to inform new employees upon hire—separately from other IIPP-required communication—in a language they understand, that the employee has the right to inspect the IIPP, and that the employee may have an authorized representative request a copy in writing as well.

This establishes a new requirement on employers to inform employees that could easily and most appropriately be placed into existing requirements to inform new employees regarding the IIPP, which is not allowed in the bill.

Programs and training derived from the IIPP are required to be in languages understood by the employees because those (not the program itself) are implementation components of the safety program that are delivered to employees.

AB 2895 also creates a new Cal/OSHA definition of authorized representative as anyone the employee designates as such, to receive a written copy of the employer's plan.

A failure of the employer to provide the written copy of the program to the representative upon written request would be subject to Cal/OSHA enforcement and a citation, or injunctive relief that would require the employer to appear in court—which is unprecedented for enforcement

of a Cal/OSHA violation. Outside representatives should be required to follow existing due process to obtain employer documents.

The provisions of AB 2895 are overly burdensome and punitive, particularly in light of the fact that the IIPP information will be of no use to employees because it consists primarily of the operational and logistical details of the employer's plan. It is totally unreasonable as a new burden on employers that opens them up to penalty without harm or risk of exposure to employees.

Background

Implementing an IIPP as required by current law means employers must provide employees information regarding working safely through communication and training. The IIPP must include:

- A system for ensuring that employees comply with safe and healthy work practices.
- A system to communicate with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including a system for employees to report hazards to the employer.
- Procedures for identifying and evaluating workplace hazards, including inspections.
- Training and instruction when the program is first established; to all new employees, for new job assignments; whenever new substances, processes, procedures or new equipment are intro-

duced; whenever the employer is made aware of a new or previously unrecognized hazard; and for supervisors to be familiar with the hazards to which their employees may be exposed.

- Documentation of specified actions taken to comply.

Cal/OSHA enforces all occupational safety and health regulations and has a penalty structure for violators, imposing the greatest penalties for those violations that put employees at the most risk. Furthermore, Labor Code sections 6423 and 6425 provide for additional penalties and enforcement actions for the most egregious violators.

The Private Attorneys General Act allows employees to pursue civil penalties through the legal system when agencies do not have the resources to do so.

Creating a new enforcement scheme centered around employers providing documentation to employees and their representatives, thereby creating a “violation” that does not cause a hazard or harm to the employee, nor has a demonstrated need, sets a public policy precedent that is unnecessary and unwarranted.

Action Needed

AB 2895 currently awaits action by the Senate. August 31 is the deadline for each house to pass legislation to the Governor's desk.

Contact your senators and urge them to vote **no** on **AB 2895**.

Staff Contact: Marti Fisher

Streamlining Review for Critical Projects Passes Senate

From Page 1

- creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians;
- does not result in any net additional emission of greenhouse gases;
- the project applicant has entered into a binding and enforceable agreement that all mitigation measures required under CEQA shall be conditions of approval for the project;
- the project applicant agrees to pay

the costs of the Court of Appeal in hearing and deciding any case; and

- the project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with the lead agency's review of the project.

Although very supportive of the expedited CEQA relief that SB 734 provides, the CalChamber also emphasizes that CEQA was initially passed to ensure that California's environment is considered before moving forward with a project.

Over time, however, CEQA has become a hook for litigation and a means to delay critical projects, such as housing projects and public works projects. Until significant changes are made to the underlying process, the CalChamber supports efforts to expedite the CEQA review process for job-creating projects such as those specified by SB 734, which will encourage economic growth and recovery.

Staff Contact: Anthony Samson

Coalition Seeks Feedback on Generalized System of Preferences Renewal



July 29 marked the one-year anniversary of the Generalized System of Preferences (GSP) program

going back into effect. The California Chamber of Commerce was among 661 American organizations that sent a letter to congressional leaders to urge retroactive renewal of the GSP program. Just a few days after the letter was sent, Congress reauthorized the program.

The Coalition for GSP, a Washington, D.C.-based group of U.S. businesses, trade associations, and consumer organizations, is asking California businesses to answer the question, “What has been the impact since then?”

The coalition is looking for anecdotes that resonate with policy makers, adding specific examples to the data the coalition can gather.

GSP extends duty-free treatment to several thousand products imported into the United States from more than two-thirds of the world’s countries. GSP is an important way U.S. companies keep costs down. Large and small businesses import products duty-free under GSP.

According to the coalition, the renewal alone led to about \$1.3 billion in refunds. The coalition also states that GSP waived about \$580 million in additional import taxes from August 2015 to May 2016 (the [graphics page](#) at [renewsgstoday.com/graphics](#) has snapshots with monthly savings update). Assuming average savings in June and July, GSP renewal meant an extra \$2 billion at the disposal of U.S. companies over the last year.

In fact, in the first four months of 2016, GSP saved American companies about \$230 million in eliminated tariffs. For a map showing the overall GSP imports and savings by state from Janu-

ary to April, visit: <https://renewsgstoday.com/2016/06/14/year-to-date-gsp-savings-by-state-through-april-2016/>.

Companies in California continued to lead the way with \$36 million in tax savings, followed by companies in New Jersey with \$20 million. Texas replaced New York in third place and Florida leapfrogged over Georgia for fifth place among all states in terms of tax savings from GSP so far in 2016.

The survey will remain open until Labor Day (Monday, September 5). As always, respondents have full say over whether any company-specific info can be used publicly or if responses can be part of only the aggregated survey results.

Take the survey here: <https://renewsgstoday.com/2016/08/01/survey-gsp-renewal-impacts-after-1-year/>.

Background

The GSP program eliminates import taxes on designated products from 122 developing countries around the world. GSP was instituted on January 1, 1976, by the Trade Act of 1974 and is designed to promote economic growth in the developing world by providing preferential duty-free entry for products from designated beneficiary countries and territories.

GSP was reauthorized on June 29, 2015 (effective July 29, 2015) for a period of two-and-a-half years. The program is set to expire on December 31, 2017.

Signatories on the letter sent by the U.S. Chamber of Commerce, CalChamber and others on June 24, 2015 to U.S. House and Senate leaders in support of renewing the GSP program included businesses ranging in size from single-person sole proprietorships to some of the largest corporations in the world. Industries represented included apparel, footwear, food, consumer electronics, fashion jewelry and accessories, wood

products, fisheries, retail, recreational vehicles, rug importers, sports and fitness, wood products and travel goods.

The businesses are headquartered in 46 states and 290 congressional districts, and the District of Columbia.

Impact

GSP is an important tool for boosting economic growth and job creation. Many U.S. companies source raw materials and other inputs from GSP countries, and the duty-free treatment of these imports reduces the production costs of these U.S. manufacturers, making them more competitive.

California received more than any other state in refunds. In 2015, GSP waived tariffs in California on \$2.7 billion worth of imports and saved California companies \$103 million. Of the \$633 million saved by U.S. companies in 2015, more than 15.5% went to California.

Products eligible for duty-free treatment under GSP, according to the Office of the U.S. Trade Representative, include most manufactured items; many types of chemicals, minerals and building stone; jewelry; many types of carpets; and certain agricultural and fishery products.

CalChamber Position

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

The CalChamber supports reauthorization of the GSP program so that companies throughout the United States can save hundreds of millions of dollars in taxes, funds that could be used to support future growth.

For more information, please visit www.calchamber.com/gsp.

Staff Contact: **Susanne T. Stirling**

August 1 Compliance Alert



**Mandatory Changes
Issued by the U.S.
Department of
Labor (DOL)**

On August 1, 2016, mandatory changes to the Federal Minimum Wage notice and Employee Polygraph Protection Act notice took effect. All employers need to update their postings.

CalChamber's all-in-one poster makes your compliance easy, without costing a lot. **Save 20% through August 31** when you order a replacement poster (with Preferred/Executive members saving an extra 20% after their member discount).

PURCHASE at calchamber.com/staycurrent or call (800) 331-8877 with priority code FED4.

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