

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

VOLUME 31, NUMBER 1 • JANUARY 7, 2005



## Governor's Reform Agenda Will Improve State Economy

In his State of the State message this week, Governor Arnold Schwarzenegger laid out reforms to many aspects of California government that will all result in a stronger economy.

Central to his agenda was improving California's education system, stabilizing out-of-control government spending, making legislators accountable to the voters and improving the state transportation system.

"The California Chamber applauds the Governor for having the courage to attack these difficult, but necessary issues," said Chamber President Allan Zarembeg. "All these reforms have a direct impact on California's economy and jobs climate."

### Special Session

The Governor called for a special legislative session "to address the financial, educational and governmental reforms that civic responsibility demands." He asked legislators to work with him on four reforms:

- Ending budget formulas that automatically increase spending beyond state revenues, and placing tighter controls on spending.
- Putting reapportionment in the hands of an independent panel of retired judges.
- Strengthening standards-based education by tying teachers' pay to performance rather than length of employment, showing parents and taxpayers how education dollars are



AP Photo  
Governor Arnold Schwarzenegger

spent, furthering charter schools and increasing vocational education.

- Bringing the escalating cost of the state pension system under control by moving new employees to a defined contribution plan.

### More Changes

Other changes the Governor advocated to keep California's economy on the road to recovery included:

- A prescription drug discount card that will

make prescription drugs available to nearly 5 million lower-income Californians and help reduce their health care costs.

- Legislation to remove regulatory and legal barriers that delay construction and increase the costs of new housing.
- Starting on government restructuring suggested by the California Performance Review by reorganizing the Youth and Adult Correctional Agency and eliminating nearly 100 unnecessary boards and commissions, which will abolish more than 1,000 political appointments.

### Timeline

The Governor said the special session "will allow us to work together quickly, so that people can vote on our reforms in an election by early summer."

The Chamber will be actively monitoring and participating in the budget process to ensure that the budget balances the state's funding needs while encouraging economic growth.

Staff Contact: Jeanne Cain

## Chamber Works to Fix 'Tax Amnesty' Program Problems

The California Chamber of Commerce is working with state officials and other interested groups to remove unintended negative consequences from a "tax amnesty" program that will take effect starting in February.

The Chamber and other taxpayer representatives are concerned that the breadth of the new program will catch numerous taxpayers unaware, exposing them to extreme financial penalties even though they have not deliberately failed to pay or report taxes accurately.

The stated aim of the program is to encourage taxpayers to pay unpaid or late taxes more quickly — thereby bringing in added revenues to help relieve the state budget — by waiving some penalties for those who apply for the program.

To participate, a taxpayer must file an application between February 1 and March 31, 2005 and indicate for which years or tax reporting periods the amnesty is requested. The taxpayer has until May 31, 2005 to pay all taxes and interest owed, or enter an installment agreement.

### Harsh New Penalties

Unfortunately, along with the program are harsh new penalties that could be imposed on all taxpayers, large

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## Labor Law Corner

# Employer Must Be Timely in Paying Employee's Final Wages



**Ed Levine**  
Labor Law Advisor

*What are the consequences if we fail to pay an employee his/her final check and/or his/her accrued vacation at termination?*

An employee who quits or is discharged and not paid *all* wages and vacation earned at the time required is

entitled to another day of pay for every day not paid, up to the maximum of 30 days of wages.

If an employer discharges an employee, the wages and vacation earned are payable immediately.

### When Employee Quits

An employee who quits with less than 72 hours advance notice is payable 72 hours after quitting, if the employee returns and seeks payment.

An employee who gives 72 or more hours advance notice is required to be paid at the time of quitting.

An employee who quits without 72 hours notice, but requests that his/her check be mailed and designates a mailing address, shall be entitled to receive payment by mail, and the check must be placed in the mail within 72 hours after the employee has quit.

An employer who takes, from the final wages and/or vacation wages, deductions that are not authorized by law or the employee, is subject to the

penalties for late payment for every day wages are not paid.

### Wages Not Yet Earned

There are situations where wages, such as commissions, are not calculable or have not yet been earned (for example, payment was not received from the buyer or the product sold has not yet been delivered) and thus are not due upon termination of employment. The employer has an obligation to pay when these monies are earned, but no penalties can apply for failing to pay at termination of employment.

If an employee is laid off or suspended without a specific return date within the normal pay period, the wages and vacation earned up to and including the layoff date are due and payable on the last day of employment.

For additional information, see Chapter 12 of the California Chamber's *California Labor Law Digest*.

*The Labor Law Helpline is a service to California Chamber preferred and advisor members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or e-mail: helpline@calchamber.com.*

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*Alert* (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to *Alert*, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate: Danielle Kando-Kaiser. Art Director: Andrew Larsen. Graphics Assistant: Jason Untalan. Capitol Correspondent: Kearsten Shepherd.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce *Alert*, and reprint is mailed to *Alert* at address above.

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## Chamber Calendar

### Luncheon Forums:

January 13, January 27, February 10, Sacramento.

## Seminars

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Best Practices in Leadership. Claremont McKenna College Kravis Leadership Institute. February 25-26, Claremont. (909) 607-8111.

### Labor Law

Labor Law Training Seminars. California Chamber of Commerce. January 20, Irvine; January 21, San Diego; January 26, Santa Clara; January 27, Oakland; February 3, Sacramento; February 17, Sacramento. (800) 331-8877.

## 2005 Mileage Rate

As of January 1, the Internal Revenue Service (IRS) has increased the optional standard mileage rates to use in computing the deductible costs of operating an automobile for business, charitable, medical or moving expense purposes.

For the use of a car (including vans, pickups or panel trucks), the rates are:

- 40.5 cents a mile for all business miles driven, up from 37.5 cents a mile in 2004;
- 15 cents a mile when computing deductible medical or moving expenses, up from 14 cents a mile in 2004; and
- 14 cents a mile when giving services to a charitable organization.

The IRS said the three-cent increase in the business mileage rate was the largest one-year rise ever.

## *Employer Comments Needed*

# California Chamber Supports State's Efforts to Simplify Meal/Rest Period Rules

The California Chamber of Commerce is supporting a state proposal to simplify the rules governing when employees should take a break from work for meals and rest periods.

The state Department of Industrial Relations (DIR) has scheduled three public hearings in February and March on its proposal.

"California employers and employees have been needing more flexibility so that workers can eat and rest when they're hungry or tired, rather than at a time set by state bureaucrats," said Julianne Broyles, Chamber director of employee relations and small business. "These new rules will be a welcome change that will allow businesses and workers to mutually agree to make adjustments to balance the needs of job and family, like allowing the employee to leave work early to attend a school or social function or to beat rush hour traffic."

## **Employers Can Follow Proposed Rules Now**

The proposed regulations will clarify sections of the Labor Code that were added in 2000, but have been subject to considerable misinterpretation due to conflicting opinion letters issued by the Division of Labor Standards Enforcement (DLSE) and further changes to the Labor Code that now differ from the Industrial Welfare Commission orders, according to DLSE.

DLSE has rescinded the conflicting opinion letters and will be applying the new rules detailed below as the official enforcement policy on meal breaks from this point forward. Employers who accurately follow the proposed rules will be deemed in compliance with California meal break requirements.

## **Old Rules Confusing, Denied Flexibility**

The old rules required employers to

provide employees a 30-minute off-duty meal period after five hours of work, unless six hours of work would complete the non-exempt employee's work for the day. In addition, employers must provide employees at least two 10-minute rest periods in the typical eight-hour workday.

The old rules prohibited the employee from waiving or working through a meal period in the middle of the day simply for the employee's convenience.

Employers were considered in violation of the law when an employee who had been provided with the opportunity to have an off-duty meal period failed to use some or all of the meal period provided.

## **Proposed Rules in a Nutshell**

The proposed permanent regulation:

- sets out the steps an employer must follow to meet the statutory requirement for providing a meal period;
- clarifies that workers may choose to begin the initial meal period in a workday by the end of the sixth hour in a workday;
- provides a definition of the term "work period"; and
- clarifies that the one hour of pay an employer must pay a worker for a missed meal or rest break is a penalty rather than a wage.

## **New Rules Clear and Simple**

Under the proposed rules, employers must meet the following steps in order to fully comply with the Labor Code requirements for meal and rest breaks:

- The employer must make the meal period available to the worker.
- The employer must afford the worker the time to take the meal period.
- The employer must have the correct IWC wage order posted in its workplace.

- The employer must keep accurate time records for all covered hourly workers.

The proposed rules also provide that, in addition to following all of the steps listed above, the employer also may provide written notice to employees of their meal period rights and obtain a signed acknowledgment that the notice has been received and understood as additional evidence of compliance.

The rules also designate that the amount owed an employee for a missed meal or rest period is a "penalty" and not a "wage," providing a one-year statute of limitations, as opposed to three years applicable to wage claims.

## **New Rules Provide Needed Flexibility to Workers**

The proposed permanent regulation also provides workers with additional flexibility by clarifying that:

- Workers working less than six hours in a day can mutually agree with their employer to waive the meal period.
- Workers working between six and 10 hours in a day will be able to take their meal period at a time after the sixth hour, as long as the employer ensures that the worker had time available and the opportunity to eat before the end of the sixth hour.
- Workers working between 10 and 12 hours may mutually agree with their employer to waive the second meal period if the worker took the first meal period.
- Meal breaks can be taken at any point from the beginning of the fifth hour of work to the end of the sixth hour of work.

## **Employer Action Needed**

Employers and employees are strongly encouraged to write letters in support of simplifying the rules covering meal and rest breaks in order to provide workers more flexibility. The deadline to submit written comments is 5 p.m. on March 2, by mail, e-mail or fax.

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## New Workers' Comp Regulations in Effect

The new permanent disability rating schedule released by Governor Arnold Schwarzenegger went into effect January 1.

"This new permanent disability rating schedule will reduce costs within the workers' compensation system, further achieving the results the Legislature sought in passing SB 899," said California Chamber President Allan Zaremborg. "These regulations are based on national guidelines and will promote consistency, objectivity and predictability — all things that are missing in our old, overly litigated, subjective, costly system."

The new permanent disability rating

schedule will begin with an objective new tool for rating disability — the American Medical Association (AMA) guidelines. This mirrors what most other states use to determine the severity of an injury. Then, several conversion factors, including age, occupation and loss of future earning capacity, will be applied to develop the level of disability. Finally, in recognition of whether an injured worker can return to work, an adjustment of 15 percent will be made to the disability payment based on whether an offer is made to an employee for regular, alternative or modified work.

The future earning capacity conver-

sion, which will be unique to California, is based on empirical wage loss data developed by the RAND Institute for Civil Justice.

"This new schedule is one more step in improving California's workers' compensation costs — making California a more business-friendly state," continued Zaremborg. "This will allow California's economy to realize dramatic benefits as soon as possible."

For more information on the implementation of workers' compensation reforms supported by the Chamber, visit [www.calchamber.com](http://www.calchamber.com).

**Staff Contact: Charles Bacchi**

## Chamber Urges Employers to Comment on Meal/Rest Period Rule Changes

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Send letters of support to: Allen Perloff, Senior Deputy Labor Commissioner, Division of Labor Standards Enforcement, 9th Floor West, P.O. Box 420603, San Francisco, CA 94142. E-mail: [dlsecomments@dir.ca.gov](mailto:dlsecomments@dir.ca.gov). Fax: (415) 703-4807.

Please send copies of your comments to the Chamber at [ccc@calchamber.com](mailto:ccc@calchamber.com) or fax (916) 325-1272.

**Employers and their employees are also urged to attend and testify in support of the rule changes at one of the hearings below.** If interested in testifying, please contact Julianne Broyles at [julianne.broyles@calchamber.com](mailto:julianne.broyles@calchamber.com) for more information.

### Hearings

The public hearings are scheduled to start at 9 a.m. on the following dates:

- February 4 in Los Angeles - 300 South Spring Street;
- February 8 in San Francisco - 455 Golden Gate Avenue; and
- March 2 in Fresno - 2550 Mariposa Mall.

A copy of the proposed regulations, including examples, is available at [www.dir.ca.gov/dlse/MealandRestPeriod2.pdf](http://www.dir.ca.gov/dlse/MealandRestPeriod2.pdf).

**Staff Contact: Julianne Broyles**

## California Chamber Works to Fix 'Tax Amnesty' Program

*From Page 1*

and small, corporate and individual, for any unpaid taxes for tax years before 2003. The penalties may be imposed regardless of why the tax was unpaid or whether the taxpayer even knew about the deficiency.

For example, after the end of the amnesty period, the Franchise Tax Board (FTB) will assess an accuracy-related penalty and a 50 percent interest penalty for deficiencies assessed for tax years prior to 2003, with the accuracy-related penalty doubling to 40 percent for taxable years before 2003.

Similarly, the State Board of Equalization (BOE) will double penalties for taxes determined on or after April 1, 2005 and will also assess an interest

penalty equal to 50 percent of the interest due on amounts "due and payable" after March 31, 2005, computing the penalty from the original date of the return (not taking extensions into account) through March 31, 2005.

Both the FTB and BOE will apply the 50 percent interest penalty from the due date of the original return through March 31, 2005, with no exceptions or dispute allowed.

The tax program applies to all taxpayers for all open tax years before 2003, covering both sales and use taxes administered by the state BOE, and the personal and corporate income and franchise taxes overseen by the state FTB.

The two entities differ, however, on

specifics such as waiving fees (the FTB will waive most fees for amnesty participants, but the BOE won't); and whether they will take installment payments (for business taxpayers, FTB won't, but the BOE will).

### Business Concerns

The Chamber believes the FTB and BOE implementation of the so-called "tax amnesty" program should not punish taxpayers who in good faith are paying their taxes. Taxpayers who believe they have a legitimate issue with their tax assessment or who are under audit should not be indiscriminately penalized. Nor should inadvertent errors be subject to the harsh new penalties.

**Staff Contact: Erika Frank**

## Entertainment Industry Executives Recap Trends for Chamber Board



Presenting an overview of the state of the entertainment industry and emerging issues at the latest meeting of the California Chamber of Commerce Board of Directors are (from left) Chamber Board members Eric Rodli, Eastman Kodak Company; Gary Roberts, Fox Group Legal; and Michael Smarinsky, Metro-Goldwyn-Mayer Inc.

## Communications Professionals Offer Insights on Public Relations



Presenting perspectives on public relations at the latest quarterly meeting of the California Chamber Board of Directors are Eric Dezenhall (left), head of Dezenhall Resources, a firm specializing in crisis management communications, and author of *Nail 'Em! Confronting High Profile Attacks on Celebrities and Businesses*; and pollster Frank Luntz, head of Luntz Research Companies, host of "America's Voices" on MSNBC, and writer and supervisor of more than a thousand surveys and focus groups for corporate and public affairs clients in 11 countries since 1992.

## Canadian Consul General Visits California Chamber

Canadian Consul General Alain Dudoit visited the California Chamber of Commerce recently to speak with Chamber President Allan Zarembeg about the California-Canada trade relationship.

Dudoit, who was appointed to his post in Los Angeles in September 2004, has spent the last few months meeting with business leaders, governmental officials and academics about issues of investment, border security and defense cooperation.

### Strong Trade Relationship

Canada is California's third largest export destination. Trade between the United States and California supports 5.2 million jobs, with 626,000 jobs in California alone.

Two-way trade between Canada and the United States totaled \$442 billion in 2003 — the largest bilateral exchange in the world.

Trade between Canada and California totaled \$25.3 billion, with California exporting \$11.7 billion or 12 percent in total state exports. California, in turn, imported \$16.5 billion in Canadian goods in 2003, with Canadian transportation products accounting for 55 percent of total state imports for that year.



Canadian Consul General Alain Dudoit (right), appointed to his post last September, visits with California Chamber President Allan Zarembeg.

Leading the export market, California technology companies sold nearly \$2 billion in telecommunications goods to Canada in 2003.

Additionally, transportation goods accounted for 41 percent of all bilateral trade between California and Canada, with California exporting \$1.3 billion in

transportation products — two-thirds more than the previous year.

### More Information

For more information on California trade with Canada, visit [www.calchamber.com/international](http://www.calchamber.com/international).  
Staff Contact: Susanne Stirling

## U.S. Small Business Administration Seeking Comments on Size Standards



The U.S. Small Business Administration (SBA) is seeking comments from the general public on key issues relating to small business size standards.

These key issues include the rules used by the SBA and other federal agencies to determine whether a business is considered small.

In March 2004, the SBA proposed restructuring its size standards and reducing the number of 37 different size categories to 10 categories and expressing all size standards in terms of the number of the company's employees. The SBA received numerous comments

from the public expressing concern about this new approach. The SBA withdrew its proposal for further study.

Before the SBA considers a different approach to restructuring its size standards, it is seeking comments on a number of issues, including:

- approaches by which to simplify size standards;
- calculating business employment size;
- use of receipts to measure employment size;
- designating size standards on federal procurements;
- establishing a separate set of size standards for federal procurements;
- establishing tiered size standards for small business sub-categories;
- simplification of the affiliation and joint venture provisions;

- grandfathering existing small businesses from revised size standards;
- identifying the use of size standards on non-SBA federal programs and regulations; and

● the impact of size standard changes. The SBA will also be conducting a series of public meetings across the country on size standards to listen to ideas and concerns from the small business community. The SBA will consider a new size standards proposal once it has completed a thorough review of comments received from the public. All comments are due by February 1, 2005.

For more information on the proposed restructuring or to submit comments, please visit the SBA website at [www.sba.gov](http://www.sba.gov).  
Staff Contact: Julianne Broyles



# Introducing your complete sexual harassment training solution.

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#### For non-supervisory employees

California law also requires you to train all employees. Fortunately, we offer a separate online training program for non-supervisory personnel as well. This course includes real-world situations that employees can relate to in the workplace, and it also features proof of training.

### [Sexual Harassment Training for Supervisors](#) — Web seminar

The second course offering is *Sexual Harassment Training for Supervisors*, a one-hour live Web seminar offered twice each year.

This course also **satisfies one hour of the mandatory requirement**. You can ask questions and get answers from California Chamber experts.

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#### SEMINAR PRESENTERS

Paul Schechter, Employment Law Counsel and Susan Kemp, Senior Labor Law Counsel  
California Chamber of Commerce

or call **1-800-331-8877**

8am - 5pm (PST) Monday - Friday



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