

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Chamber Advocates Change in Meal/Rest Period Rules

Says Workers, Employers Need Increased Flexibility



The California Chamber of Commerce and other employer groups are strongly supporting changes proposed by the Schwarzenegger administration in the rules governing when employees may take a break from work for meals and rest periods.

As the state opened the first of three hearings on the proposed rule changes this week, the Chamber argued that workers need to eat and rest when they are hungry or tired, rather than at a time

set by state bureaucrats. Both employers and employees have said they would appreciate greater flexibility than was permitted by the old rules.

Clarification

The new proposed rules make no change to existing law; they simply clarify what employers and employees may do.

The rules implement sections of the Labor Code that were added in 2000, but which have been subject to misinterpretation because of conflicting opinion letters

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Chamber Seeks Business Comments on ADA Lawsuit Abuse

The California Chamber of Commerce is asking members to send in comments about their experiences with lawsuit abuse under the federal Americans with Disabilities Act (ADA).

Thousands of California businesses, primarily small businesses, have been hit with a steady stream of lawsuits for allegedly violating the access requirements of the ADA.

Under the federal ADA, a business that is open to the public must have designated parking and no steps or curbs blocking an entrance. Bathrooms and aisles must be able to accommodate patrons with wheelchairs and counters cannot be too high. The ADA allows a disabled person who has been denied access to a public building because of access violations to file a lawsuit.

Businesses throughout the state have been targeted by what have been called "frequent filers" who file look-alike lawsuits where a single plaintiff and his/her lawyers file lawsuits alleging the same violation against numerous small businesses in a particular area. As a

Take survey at calchamber.com or e-mail ariel.calvert@calchamber.com

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Cabinet Secretary Speaks at Chamber Luncheon



Terry Tamminen, Cabinet secretary for Governor Arnold Schwarzenegger, encourages listeners at the California Chamber Luncheon Forum on January 27 to work with the administration on state environmental policy. Tamminen, who served as secretary of the California Environmental Protection Agency for the first year of the Schwarzenegger administration, described the administration's approach as supporting environmental sustainability over at least the next 20 years.

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Cal/OSHA Corner

Employers Must Post Injury/Illness Log 300 at Employee Worksite



Mel Davis
Cal/OSHA Advisor

We plan to post the annual summary for the Log 300 at our headquarters only. Are we required by law to post site-specific summaries at each worksite location?

Following extensive revisions in 2002, the California Code of Regulations

is specific in requiring that the Log 300 summary be posted at each site rather than in an employer's central administrative office.

The rules that govern the maintaining and posting of accident/illness data appear in Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, with the Log 300 posting requirements being spelled out in Section 14300.32.

Like the Log 300, the summary is to be maintained for *each* establishment that has or is expected to be in operation for one year or longer.

Temporary Workplaces

For establishments in existence for less than one year, one OSHA log/summary may incorporate all recordable injuries and illnesses that may occur at any and all of the "temporary" establishments. That log/summary for the "temporary" establishments may be included with the central location's Log 300 and summary.

If a company has developed or has available a system to receive all the required accident/illness information to develop and update a site-specific log, a centralized record-keeping system can be maintained. However, the company must have the ability to return the specific information to the affected location within seven days.

Information Availability

The regulation states that there shall

be a specific Log 300 and that records may be maintained in a central location if they can be made available to requesting regulatory personnel within four business hours or affected employees within seven days.

The Labor Law Helpline is a service to California Chamber executive and preferred 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.

Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber.com/events.

Business Resources

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

International

Global California: Expanding Opportunities. TradePort. February 10, Oakland. www.tradeport.org.

California Council for International Trade Policy Forum. California Council for International Trade Policy. February 23-25, San Diego. (619) 615-0868.

Labor Law

Labor Law Training Seminars. California Chamber of Commerce. February 17, Sacramento.

Labor Law Training Web Seminar. California Chamber of Commerce. March 3. www.calchamberstore.com/llseminar.

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Chamber Calendar

Luncheon Forum:

March 17, Sacramento.



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Chamber Cautions: Corporate Tax Increases Will Harm California Business Climate

The California Chamber of Commerce is warning state policymakers that increasing taxes on businesses will not resolve the state's budget woes.

This is in response to state Treasurer Phil Angelides, who last week reiterated his proposal to resolve the state's continued spending crisis with new taxes on California businesses.

The Chamber is pointing out that attempting to balance the budget on the backs of businesses will harm California's economy, thereby reducing state revenues and hampering the state's efforts to stabilize its budget.

Key points the Chamber wants lawmakers to consider include the following.

Taxes Matter to Business

California businesses begin to generate revenue for the state before they even open their doors for business. Licensing fees, permitting fees and environmental fees are just a few of the costs businesses must incur just to operate in this state.

In addition, California businesses must grapple with a long list of taxes (such as property taxes, sales taxes, income taxes, utility taxes and employment taxes).

Competition forces businesses to routinely search for more tax-friendly environments, and businesses generally view California's tax system as one of the most aggressive in the nation.

Individual and corporate taxation make up 50 percent of California's revenues (billions more are paid to local governments). California's corporate tax alone — which as of December 31, 2003 stood at 8.84 percent — is higher than the tax rate in a majority of states, according to the State Business Climate Index released in October 2004 by the Tax Foundation.

Incentives Not Loopholes

The state treasurer has called for the rollback of seven economic incentives — most of which were enacted by the state Legislature. These economic incentives include, among others, the Subchapter-S corporate election, the water's edge election, sales tax exemptions for

Treasurer Targets Tax Incentives

State Treasurer Phil Angelides is proposing to:

- Eliminate special resource depletion deductions for gas and oil companies.
- Eliminate Subchapter-S election for certain businesses.
- Repeal sales tax exemption for farm and timber machinery.
- Repeal sales tax exemption for liquid petroleum gas used in agriculture.
- Alter water's edge election.
- Eliminate tax election on sale/purchase of certain subsidiaries.

agricultural machinery and fuel used in farming activities.

The treasurer is mischaracterizing these and other measures as "unjustified corporate loopholes" that unfairly shift the tax burden to individual taxpayers.

The reality is that there is no tax shift. California has a highly progressive income tax structure with the top 5 percent of taxpayers paying more than 60 percent of the personal income tax collections and the bottom 40 percent paying less than 1 percent of taxes.

Moreover, corporate and individual taxes represent half of California's tax collections, according to a recent report commissioned by The Pew Charitable Trusts, "Grading the States 2005." The next "significant revenue source," according to the report, are sales taxes, which represent 40 percent of total tax collections.

Corporate tax revenues are expected to total \$8.7 billion in 2004-05 and increase to \$9 billion in 2005-06. Taxable profits are estimated to increase by 16.8 percent in 2004-05 and 7.1 percent in 2005-06, according to the Governor's Budget Highlights for 2005-06.

Rather than lessening the burden on individual taxpayers, the treasurer's proposal to roll back economic incentives will instead hinder economic growth.

● **Subchapter-S.** Take for example the Subchapter-S election. A corporation first pays taxes on its income. If any revenue is distributed to its shareholders, they are then taxed on the amount of income received. Thus, corporate

revenue is taxed twice — at the corporate level and at the individual level.

The Subchapter-S election eliminates the double taxation of corporate income by allowing corporations (that qualify and voluntarily chose the election) to pass income through to their shareholders, who report the income on their tax returns. There is no tax avoidance — corporate income is still taxed.

The Subchapter-S election helps small businesses that do not have a large number of shareholders. It encourages entrepreneurship by relieving the double tax typically imposed on large corporations.

Eliminating or altering the Subchapter-S election will place many small corporations at a disadvantage and put California out of conformity with federal law. Moreover, double taxing Subchapter-S income leaves less money for small businesses to reinvest in expanding operations within the state.

● The **water's edge election** was enacted by the Legislature in 1986 to provide corporations with the ability to choose between being assessed either on a worldwide unitary basis or on business activity within the territorial waters of the United States.

This policy was the culmination of intense international pressure that included foreign diplomats coming to California to argue in favor of a more equitable tax levy that alleviated the unfair burden on foreign corporations doing business in California.

In 2004, a proposal sponsored by the

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California Chamber Highlights Career Technical Education Reforms

The California Chamber of Commerce is supporting reforms to the career technical education system in the firm belief that an educated workforce is a key factor for improving the state's economy.

As part of his 2005-06 budget proposal, Governor Arnold Schwarzenegger calls upon school districts to begin a renewed emphasis on providing students a career technical education pathway to success. The first step in improvement is to ensure that students are not only college-ready, but also workforce-ready.

Chamber-supported program proposals include:

- expanding students' exposure to career technical education in middle school;

- meeting the demand for middle and high school teachers with current knowledge of industry-relevant workforce skills. The administration proposes reforming teacher credentialing, particularly for K-12 schools, by creating consistent requirements between both segments;

- allowing community college districts to employ as many current professional practitioners as course demand dictates. The administration proposes excluding career technical education courses offered by community colleges from the 75 percent full-time faculty requirement; and

- greater coordination of community colleges with K-12 schools in career technical courses through the expansion of the community college Economic

Development Program. As also discussed in more detail in the higher education summary, the budget provides \$20 million to create courses that are articulated between K-12 and community colleges. This proposal builds on the Economic Development Program's successful integration with business and emerging industries and the effective Tech Prep Model (also known as the 2+2 Model).

The Chamber supports the administration's commitment to improving the link between all education segments in preparing students for highly skilled emerging careers in the continually advancing California economy.

Staff Contact: Charles Bacchi

U.S. Agency Extends Deadline to Comment on Small Business Standards

The deadline to submit comments to the U.S. Small Business Administration (SBA) on key issues relating to small business size standards has been extended to April 3.

The SBA extended the deadline by 60 days in response to requests from the public.

It originally proposed restructuring its size standards in March 2004 to reduce the number of size categories from 37 to

10 categories and express all size standards in terms of the number of the company's employees. After receiving numerous comments from the public expressing concern about this new approach, the SBA withdrew its proposal for further study.

The SBA will also be conducting a series of public meetings across the country on size standards.

Submit comments to: Gary M.

Jackson, Assistant Administrator for Size Standards, 409 Third Street, SW, Washington, DC 20416; E-mail: restructure.sizestandards@sba.gov (include RIN 3245-ZA02 in subject line of the message); Fax: (202) 205-6930.

More information is available on the SBA website at www.sba.gov.
Staff Contact: Julianne Broyles

Chamber Seeks Business Comments on ADA Lawsuit Abuse

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result, a growing number of small businesses have closed their doors for good, unable to pay tens of thousands of dollars in legal defense costs — leaving workers unemployed and lowering local tax revenue.

For example, one plaintiff specializes in alleging that toilet paper dispenser heights don't meet the ADA-required 40 inches, causing him emotional pain, humiliation and physical injury. He has filed more than 700 lawsuits in California and collected millions from small businesses in settlements.

Employers support the ADA and its

objectives. The problem, from the small business owner's perspective, is how the law is being enforced and the way lawyers seem to end up being the ones who benefit financially from the predatory lawsuits.

The Chamber supports finding ways to help businesses avoid ADA shakedown lawsuits by creating a process where businesses have the opportunity to make a good faith effort to correct an alleged ADA violation before being subject to a lawsuit.

The Chamber is asking all members that have been targeted with one of these ADA shakedown lawsuits to submit

comments and/or specific details of the case to assist the Chamber in drafting reforms.

Please e-mail comments to ariel.calvert@calchamber.com, noting in the subject line that they are "ADA Remarks" and providing name and contact information, including telephone number, somewhere in the text.

Members who do not feel comfortable providing specific details can also help by taking the Chamber's ADA survey at www.calchamber.com.

Staff Contact: Julianne Broyles

Small Business Advocate of Year Award

Merced Businessman Fights to Save Local Jobs, Prevent Plant Closure

Saving jobs, keeping a large local manufacturer open and tirelessly advocating for improvements in California state business regulations are among the many activities that have earned Bob Pinney a Small Business Advocate of the Year Award from the California Chamber of Commerce.

"I really believe that no one person is a stronger advocate in Merced County or the state than Bob Pinney," says longtime business associate Don Bergman, chief executive officer of the Greater Merced Chamber.

Pinney is the Western region manager at Werner Company, a ladder manufacturer, and a member of the Greater Merced Chamber Board of Directors.

He has been a member of the Greater Merced Chamber's Government Review Council and political action committee for the last three years, and played a large role in selecting candidates that the chamber has endorsed, helping to elect members to the county board of supervisors and state Assembly.

Manufacturing Jobs

Most recently, Pinney worked with the Greater Merced Chamber's Government Review Council in co-sponsoring, with the California Manufacturers and Technology Association (CMTA), a Merced County Manufacturing Summit.

Pinney led the effort to contact manufacturers in the county to testify at the summit and to the county board of supervisors about the loss of manufacturing jobs in Merced County.

Pinney's efforts led to the supervisors presenting a resolution to Governor Arnold Schwarzenegger and CMTA

requesting that action be taken to keep jobs in California.

Like many manufacturing plants, Pinney's company has faced competition from businesses overseas. As Pinney points out, plants in these countries are not faced with the regulations that are imposed upon California manufacturers.

Fortunately, Pinney's plant has managed to retain its healthy volume of work. While the company was faced with closure last year, because of Pinney's lobbying work with the Greater Merced Chamber, the plant remained open and even expanded. His efforts saved 143 jobs and will lead to the creation of 25 new jobs in the near future.

Reforming the System

Asked what he believes would be the best action the state could take toward improving overall business conditions, Pinney comments that the Governor needs to bring the problems of the state to California voters, rather than dealing with the Legislature. "The Governor needs to aggressively accelerate the presentation of problems to the public," Pinney said.

He adds that the recent changes to the state's workers' compensation system are a good start, but that his branch of the Werner Company has seen massive increases in its workers' compensation insurance premiums in the last two years. Between 2003 and 2004, premiums for the self-insured Merced com-



Bob Pinney of the Werner Company in Merced works through business figures for the new year.

pany jumped by more than three-quarters of a million dollars, according to Pinney.

These financial challenges are the main force behind Pinney's active advocacy for local businesses on workers' compensation and unemployment insurance reform.

Werner Company recently won the Large Business of the Year award from the city of Merced in recognition of all the speaking Pinney did in support of reform.

California Chamber Seeks Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominees for its Small Business Advocate of the Year award.

Nominees should have significantly contributed as an outstanding advocate for small business by being involved in such activities as working in a leadership role on statewide or local ballot measures, testifying before the state legisla-

ture or representing the local chamber of commerce before local government, or being actively involved on federal legislation.

News articles or other materials may be attached as exhibits with the application, which must include a letter of recommendation from a local chamber president or chairman of the local

chamber's board of directors.

The California Chamber recognizes award winners each year at its Business Legislative Summit.

Nomination forms may be requested from the Local Chamber Department of the California Chamber at (916) 444-6670.

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issued by the Division of Labor Standards Enforcement (DLSE) and further Labor Code changes that differed from the Industrial Welfare Commission orders, according to DLSE.

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

Giving Workers More Say

The proposed permanent regulation clarifies 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 begin at any point from the beginning of the fifth hour of work to the end of the sixth hour.

Send Letters

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.

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; Fax: (415) 703-4807.

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

Hearings

Readers who would like to join the Chamber's task force on implementing the proposed rule change, or testify at one of the remaining hearings, please contact julianne.broyles@calchamber.com.

The public hearings are set to begin at 9 a.m. on the following dates:

- February 8, 455 Golden Gate Avenue, Auditorium, San Francisco; and
- March 2, 2550 Mariposa Mall, Room 1036, Fresno.

A copy of the proposed regulations, including examples, is available at www.dir.ca.gov/dlse/MealandRestPeriod2.pdf.

Employer Comments Support Flexibility in Meal/Rest Period Rules



Following are a sampling of comments California Chamber members are making in support of changing the state's meal/rest period rules to permit greater flexibility for both workers and employers.

- A **Southern California press/printing company** employing more than 200 people reports: "Our employees are constantly requesting more flexibility with regards to when and how they take their rest periods. They also constantly request the right to choose not to have a break (in order to leave early) or request to combine break periods on given days. . . Our business is such that we could allow employees to decide when to take their rest periods, if it were only legal for us to grant such requests . . . It is unfortunate that

these well-meaning laws and regulations create unhappiness and dissatisfaction among our employees. . . The proposed changes will be a step in the right direction towards allowing employees the freedom to decide when they would like to take their allotted breaks."

- A **senior manager for a restaurant in Merced** writes: "Every employee is told that they *must* take rest and meal breaks. However, it is almost impossible for management to police the policy. . . It should be up to the employee as a responsible adult to see that they take their breaks once management makes it clear that the break times are available to them. . . We also find that the employees do not want to take a single, 10-minute consecutive rest break. Rather, since many of them smoke, they prefer to take several shorter cigarette breaks. . . In a small restaurant which is open all the time, employees need to take their rest breaks and meal breaks one at a time since the business cannot close to permit

the employees to take their breaks in unison."

- A **Ventura County manufacturer** with nearly 1,000 employees comments: "Most of our production employees work 10 hours or more per day. They have all agreed to waive the second required meal period if they work more than 10 hours per day. However, most of them would like to take their meal period halfway between their shift. Under the current regulations, this is not possible. For the shift that starts at 5 a.m., the employees are forced to take their lunch no later than 10 a.m. Most of them would prefer to take their lunch at 11 a.m. If the regulations were changed to allow employers the flexibility of scheduling meal periods up to six hours after the start of a shift, we would have many happier employees and be able to provide more flexible work schedules for them."

State Launches Drug Discount Program to Reduce Prescription Costs for Uninsured

As part of the Governor's ongoing commitment to improving the affordability and availability of prescription drugs for the uninsured, the administration has launched a discount program, California Rx (Cal Rx).

The administration estimates that Cal Rx will provide nearly 5 million uninsured residents with discounts of 40 percent or more off retail prescription drug prices.

More than one-third of uninsured patients do not have a prescription filled because they cannot afford it, the Kaiser Family Foundation reports.

One Stop

Cal Rx will offer "one-stop shopping" to link consumers to existing manufacturer programs and Cal Rx discounted drugs.

Governor Arnold Schwarzenegger has secured a commitment from the Pharmaceutical Researchers and Manufacturers Association (PhRMA) to provide \$10 million over the next two

fiscal years to create and publicize a web-based clearinghouse to help Californians enroll in manufacturers' free and discount drug programs.

Cal Rx will provide an easy-to-use single entry point to direct consumers to the best prices for their prescription, whether through companies' free programs or the Cal Rx negotiated discount.

CalRx

Key components of Cal Rx include the following:

- Drug manufacturers will provide a minimum discount of the lowest price paid by any commercial purchaser in California. Additional discounts from manufacturers will be negotiated to maximize benefits for Cal Rx participants. The combination of pharmacy and manufacturer discounts will provide eligible consumers an average savings of at least 40 percent off retail prescription drug prices.

- Cal Rx enrollees with incomes up to

300 percent of the federal poverty level (\$27,930 for an individual; \$56,550 for a family of four) are eligible.

- Age is not a consideration for qualifying for Cal Rx.

- Consumers will enroll in Cal Rx through a pharmacy, physician office, the Internet or a toll-free multilingual call center.

- A state General Fund contribution of about \$4 million to develop and implement Cal Rx will also help Cal Rx secure deeper discounts from drug manufacturers.

Carrying the legislation to create Cal Rx will be Senator Deborah Ortiz (D-Sacramento), chair of the Senate Health and Human Services Committee. The principal co-author will be Senator Charles Poochigian (R-Fresno).

Cal Rx is scheduled to begin on January 1, 2006. The clearinghouse will begin operating in spring 2005.

Staff Contact: Trudi Hughes

Chamber Cautions: Corporate Tax Increases Will Harm Business Climate

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treasurer failed in the Legislature — an indication that the Legislature was not prepared to undo a law that was the product of such intense negotiations.

- The **sales tax exemption for farm machinery and fuel used in the farming industry** will help sustain a struggling agriculture industry and ultimately help the economy.

The sales tax exemptions for equipment and fuel used in agriculture are not unique to California. The majority of states have similar exemptions. If California wants to continue to have a strong agriculture industry, it must stay competitive with other states. Preserving the state's agriculture industry is also a matter of preserving consumer safety and choice.

California has among the most strenuous environmental regulations in

the nation. They are designed to ensure that California produces the safest foods in the world. The proposed tax changes will drive the agriculture industry out of business, thereby eliminating the ability for consumers to purchase California-grown food.

The special resource deductions for gas and oil companies and the sales tax exemption for timber machinery also are important to the economy.

Tax Hikes Lead to Job Loss

California's economy is on the road to recovery, but still has a long way to go. The Chamber strongly believes that increasing taxes on businesses will ultimately stifle economic growth and force businesses to relocate to tax-friendly states.

If costs go up, a business has three choices: raise prices, reduce jobs or

relocate. For many businesses, relocation begins to look more attractive because the Internet and other new technology makes many business operations much more portable than they were 10 years ago, giving business owners greater flexibility in choosing their location.

A state with lower tax costs will naturally be more attractive to business investment. If higher taxes and costs push California businesses to move elsewhere, the state will suffer a decline in jobs and revenues, which will only hinder California's efforts to balance its budget.

Ultimately, an important budget-balancing strategy for California must focus on curbing spending and retaining businesses rather than targeting corporations for higher taxes. A strong economy will do more to generate revenues than anti-business tax policies.

Staff Contact: Erika Frank

Everything you need to know. One low price.

If you're someone who needs to be informed about labor laws, but doesn't need to be an "expert," the California HR Essentials guide and Forms CD is ideal for you. Presented in an easy-to-read, question-and-answer style, Essentials focuses on steps to follow, forms to use and helpful checklists. This guide addresses the top areas of concern to California businesses, including:

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