

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Employer/Worker Testimony Dominates Meal/Rest Hearing



More than 300 California employers and employees showed up in Los Angeles last week to testify along with the California Chamber of Commerce in support of the changes proposed by

the Schwarzenegger administration in the rules governing when employees may take a break from work for meals and rest periods.

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.

Employees appeared in person at the hearing to emphasize that they want the flexibility which the changed rules provide.

Many of the employees were restaurant workers who pointed out that they were losing significant amounts of money, ranging from 12 percent to over

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Support for Workers' Comp Head Can Keep Reforms on Track

The California Chamber of Commerce is urging employers to voice their support for the workers' compensation director who has been implementing the Chamber-backed reforms enacted last year.

"Andrea Hoch has been doing an outstanding job as administrative director of the Division of Workers' Compensation," said Chamber Legislative Advocate Charles Bacchi. "Her leadership has ensured the division met the deadlines to implement the reforms so that employers could begin realizing actual savings as quickly as possible.

"To make sure Ms. Hoch can continue her exemplary work, employers should urge the Senate Rules Committee to confirm her appointment."

Governor Arnold Schwarzenegger named Hoch to head the Division of Workers' Compensation in April 2004. Senate Rules is expected to hold confirmation hearings on Hoch's appointment before the end of this month.

Letters in support of Hoch should be sent by February 18 in order to make a difference.

The California Applicants' Attorneys Association (CAAA) is leading the opposition to Hoch's confirmation. CAAA also is fighting the reforms with lawsuits to prevent them from going into effect.

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Chamber Expands Labor Law Sessions



To meet demand, the California Chamber of Commerce has added another session to its lineup of labor law seminars for this year. The seminars on new labor laws for 2005 are led by two of the Chamber's labor law specialists: Paul Schechter (above), employment law counsel, and Susan Kemp, senior labor law counsel. The new session is set for February 25, 8:30 a.m. - noon, at the Chamber's offices in Sacramento. A February 17 Sacramento session already was planned, along with a web seminar on March 3, 10 a.m. - 11:30 a.m. To register or for more information, visit www.calchamberstore.com/llseminar.

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Labor Law Corner

More Time Off Work Available for Employees on Baby Bonding Leave



Sunny Lee
Senior Labor Law
Advisor

How much time off work is available for baby bonding leave?

Employers of five or more employees are required to provide up to four months or 88 working days of leave to an employee disabled by pregnancy, childbirth or related medical conditions.

If the employer also has 50 or more employees, and the employee has worked for the employer for one year *and* 1,250 hours, then the employee also is eligible for the California Family Rights Act (CFRA).

State Law

CFRA is a state statute and mirror image of the federal Family Medical Leave Act (FMLA). In California, FMLA runs concurrently with paid disability leave (PDL) and/or CFRA for purposes of continuing medical benefits for 12 weeks. At the end of the PDL, the employee has the right to take 12 additional weeks of leave for baby bonding under CFRA.

The purpose of baby bonding under CFRA is to allow the employee to take time off work to bond with a baby and return to his/her job at the expiration of the leave. Baby bonding is available to both the mother and the father of the child and must be used within one year of the birth or adoption of the child or it is lost.

There is no medical certification requirement for this leave; however, the employer may require a birth certificate, adoption or foster care papers.

Parents Working at Same Firm

If both parents work for the same company, they are not individually eligible for 12 weeks of leave — that 12 weeks of leave time must be shared between them.

For example, if the mother has taken six weeks for baby bonding under CFRA, then the remaining time that could be taken by the father is six weeks. Likewise, if the mother takes the full 12 weeks, then the father is not eligible for leave.

The mother and the father do not have to equally split the leave time between them. That decision is generally left up to the employees to decide. With paid family leave (PFL) now in effect, typically employees are requesting six weeks of leave to coincide with the amount of time that they are paid through PFL.

For further information on baby bonding leave requirements, please consult Chapter 21 of the California Chamber's *Labor Law Digest*, HR California on the California Chamber of Commerce website at www.calchamber.com or call the Labor Law Helpline at (800) 348-2262.

The Labor Law Helpline is a service to California Chamber 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 e-mail: helpline@calchamber.com.

Seminars

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

WTO and China's Banking Reforms: Opportunities for Bay Area Firms. California-Asia Business Council. February 16, San Francisco. (510) 523-8188.

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

SCORE Import/Export Workshop. Service Corps of Retired Executives (SCORE). February 24, San Diego. (619) 557-7272.

Labor Law

Labor Law Training Seminars. California Chamber of Commerce. February 17, February 25, Sacramento; March 3, web seminar. www.calchamberstore.com/llseminar. (800) 331-8877.

Workplace Safety

Cal/OSHA Management and Compliance Strategies. DuFour Seminars. February 18, Sacramento; February 23, Fremont; March 2, Ontario; March 9, Anaheim/Orange; March 30, Concord. (866) 312-8885.

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Chamber Calendar

Luncheon Forum:

March 17, Sacramento

Congress Takes Aim Again at Limiting Frivolous Class Action Lawsuits



Congressional leaders, including U.S. Senator Dianne Feinstein (D-San Francisco) this week renewed the push to limit frivolous litigation.

The reform vehicle is the Class Action Fairness Act of 2005, which would shift more class

action lawsuits to federal courts, providing greater uniformity in cases where plaintiffs are located in multiple states. The bill, S. 5 (Grassley; R-IA), passed the U.S. Senate this week. Feinstein is a co-author.

The California Chamber of Commerce is a long-time supporter of federal legislation that would prevent abuse of the system.

“Class action lawsuit abuse drains business resources while providing little return for those being harmed,” said Erika

Frank, Chamber legislative advocate and general counsel. “Victims get pennies on the dollar for their hardships, while trial lawyers get millions. These reforms are a step in the right direction, and we commend Senator Feinstein for her ongoing support of this effort.”

Current Abuse

Under current law, class action attorneys have great latitude to abuse the legal system by funneling national class actions involving defendants from many states into small courts known for producing high jury awards. Trial lawyers have used counties with reputations for returning high verdicts to find alleged victims rather than filing their national class actions in federal courts.

Reforms

Besides preventing such “venue shopping” by moving large, multi-state class action lawsuits from state to federal



U.S. Senator
Dianne Feinstein

court, the Class Action Fairness Act includes reforms such as:

- giving district courts greater latitude to hear class action lawsuits;
- prohibiting settlements in which class members lose money to pay attorneys’ fees; and
- ensuring fair and even distribution of damage awards to all plaintiffs.

Similar reform legislation failed to pass in the last congressional session.

Staff Contact: Erika Frank

ADA Lawsuit Abuse: California Chamber Seeking Business Comments

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).

The Chamber is working on drafting reforms to stem the tide of lawsuits. Thousands of California businesses, primarily small businesses, report being 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 one area.

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 that will be used to provide an overall picture of the problem and background for future use. A link to the ADA survey appears on the Chamber’s website at www.calchamber.com.

Staff Contact: Julianne Broyles

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

Support for Workers' Comp Director Can Keep Reforms on Track

From Page 1

Andrea Hoch

Before being appointed to the administrative director position, Hoch had served at the California Department of Justice since 1992, serving as chief assistant attorney general for the Civil Law Division since 2002.

In the justice department post, she managed the Civil Law Division's eight statewide sections and advised the attorney general and chief deputy attorneys general.

Her previous assignments included stints with the department's Government Law Section, Energy Task Force, Tobacco Litigation Section and Health, Education and Welfare Section.

Before joining the Department of Justice, Hoch was legal advisor to the Public Employment Relations Board from 1988 to 1992 and staff counsel to the Agricultural Labor Relations Board from 1987 to 1988. From 1985 to 1987, she was in private practice.

Hoch is a member of the California State Bar and received her law degree from the McGeorge School of Law, University of the Pacific. She received her bachelor's degree from Stanford University.

Action Needed

Write to the chairman of Senate Rules and urge a "yes" vote on confirming Andrea Hoch.

Send letters by February 18 to:

The Honorable Don Perata
Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814.

Be sure to send a copy to the Chamber at ccc@calchamber.com or fax (916) 325-1272.

The sample letter at right is available in an easy-to-use electronic format at www.calchamber.com.

Staff Contact: Charles Bacchi

Sample Letter Supporting Andrea Hoch, Administrative Director, Division of Workers' Compensation

Date

The Honorable Don Perata
Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Perata:

I urge your support for the confirmation of Andrea Hoch as Administrative Director of the Division of Workers' Compensation.

As a business owner in _____, I experienced first-hand the effects of California's broken workers' compensation system. My business had experienced a _____-fold increase in just _____. As a result, we had to forgo expansion and decrease employee benefits.

Today, it is clear that the system is on the mend because of the reforms passed by the legislature last year and approved by Governor Arnold Schwarzenegger and further implemented by Ms. Hoch.

The workers' compensation system is being transformed to a workable, efficient system. Without Ms. Hoch's efforts, we might not be here today. If Ms. Hoch isn't confirmed, the system risks going into a downward spiral. Don't stand in the way of reform by blowing up the system that is being repaired.

Please confirm Ms. Hoch as Administrative Director of the Division of Workers' Compensation.

Sincerely,

Name
Title
Company

cc: California Chamber of Commerce
Fax (916) 325-1272

Chamber Lets State Tax Body Know of Business Concerns on Tax Amnesty

The California Chamber of Commerce joined other business organizations this week in voicing concerns to the state Franchise Tax Board (FTB) about the current tax amnesty program.

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.

Although the FTB heard these concerns, it took no action. Instead, the board directed staff to examine other states' amnesty programs to determine whether those programs had similar problems and what action was taken to resolve them.

Board members said further examination is needed to assess whether an administrative fix is feasible.

How Program Works

To participate in the tax amnesty program, a taxpayer must file an application by 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.

Unfortunately, along with the program are harsh new penalties that could be imposed on all taxpayers, large and small, corporate and individual, for any unpaid taxes for tax years before 2003. The penalties may be imposed regardless of whether a taxpayer was under audit, protest or litigation under the amnesty period.

For example, after the end of the amnesty period, the FTB will assess a 40 percent accuracy-related penalty (doubled from 20 percent) and a 50 percent interest penalty for deficiencies assessed for tax years prior to 2003.

Starting April 1, both the FTB and Board of Equalization (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).

Changes to Program

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.

The Chamber is working with the appropriate parties to correct the unintended consequences of the tax amnesty program. Whether that solution will be legislative or administrative is still unknown.

Applications

All taxpayers that wish to participate in the tax amnesty program must apply and file any required tax return(s) by March 31, 2005. Applications are available at www.taxes.ca.gov or may be requested by calling (800) 400-7115.

Staff Contact: Erika Frank

Fish/Game Commission Declines to List Tricolor Blackbird as Endangered *Decision Averts New Restrictions for Central California Farm Operations, Other Projects*

In a decision with positive ramifications for agricultural operations and projects in much of Central California, the state Fish and Game Commission has rejected a proposal to list the tricolor blackbird as endangered under the California Endangered Species Act.

A coalition including the California Chamber of Commerce and grower, agricultural, landowner and water associations had urged the commission not to list the tricolor blackbird as endangered.

Farm operations and affordable housing projects in parts of the state could

have been hurt by a decision to list the tricolor blackbird as endangered. Listing of a species leads to numerous new requirements and restrictions on everyday actions that affect the habitat of the species.

For example, farmers and ranchers would have to change or stop some of their routine practices, such as plowing, pruning or harvesting, in order to accommodate the species. Routine maintenance of utility lines and waterworks also could be affected if they run through the blackbirds' habitat.

When a species is listed under the California Endangered Species Act, any action that harms that species or disturbs habitat deemed necessary for the species' survival requires a permit and mitigation for the damage. An example of avoidance for a utility would be delaying maintenance until after nesting season.

Widespread Impact

The listing would have affected 46 of California's 58 counties since various reports say the bird's geographic range

See Fish/Game: Page 7

Committee Files Suit to Preserve First Amendment Rights

Accusations Have Restricted Committee's Rights

Citizens to Save California (CSC), the general purpose committee organized to support reform agendas identified by the Governor and others, is challenging a Fair Political Practices Commission (FPPC) fundraising regulation.

California Chamber of Commerce President Allan Zaremborg co-chairs CSC.

The CSC lawsuit, filed February 9, asks the court to invalidate the regulation or prohibit the FPPC from enforcing it. The regulation limits contributions to committees controlled by a "candidate."

The complaint cites three concerns:

- First, the regulation is illegal.
- Second, the regulation is contrary to

the terms of the Political Reform Act.

● Finally, the regulation restricts freedom of speech rights in the most sensitive of areas — political campaigns on issues of significant importance.

In a statement, CSC said it "functions entirely within the appropriate laws and regulations laid out by the FPPC" and has complied with the regulation it challenges in the lawsuit (FPPC regulation 18530.9).

"The complaint filed with the FPPC alleging CSC violated this regulation is nothing more than a shameless and transparent effort by special interest groups to interfere with the political process," the CSC statement notes.

Joel Fox, co-chair of CSC and

president of the Small Business Action Committee, said, "It is disturbing the way special interests are distorting the law and trying to cast a cloud over the actions of this committee. Our actions are appropriate and perfectly legal."

Responding to a reporter's question regarding CSC, Liane Randolph, chairwoman of the FPPC, was quoted this week as saying, "If you appear at a fund-raising event for this committee, we wouldn't consider that, in and of itself, to mean you are in control. If you speak in favor of their goals, we wouldn't consider that, in and of itself, to be control."

Employer/Worker Testimony Dominates Meal/Rest Period Hearing

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25 percent of their tip income, due to the inflexible rules.

The final public hearing on the new rules is set for March 2 in Fresno.

The Chamber is encouraging all businesses to continue voicing support for more flexible meal/rest period 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 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, if the employee so requests and 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.

Show Your Support

The supporting testimony shown by employers and employees in Los Angeles last week made a huge impact on all in attendance. The Chamber is encouraging all businesses and employees to continue voicing support for adding flexibility to

the state's meal/rest period rules.

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

The final hearing is set for 9 a.m. on March 2 in Fresno at 2550 Mariposa Mall, Room 1036.

The deadline for submitting comments is 5 p.m. on March 2, by mail, e-mail or fax.

Send letters of support to: Allen Perlof, 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.

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

State Recognizes Chamber Member as Outstanding Employer

Farmers Insurance Group of Companies, a California Chamber member, has been named an Outstanding Large Business Employer as part of the Employment Development Department's (EDD) program recognizing outstanding older workers and employers.

Commitment to Workers

In presenting the award to Farmers Insurance, EDD recognizes the company's commitment to retaining and training older workers. Of the 5,642 Farmers employees in California, 59.7 percent are older workers, and of all new Farmers employees hired in California in 2003, 28.5 percent were over age 40, EDD reports.

In the last two years, according to EDD, Farmers recognized the contributions of its older workers by promoting more than 40 percent of those employed in California.

The EDD program praised Farmers for designing its policies, practices and benefits to reward employees who build careers within the organization. Professionals at Farmers who work in a



FARMERS

wide variety of fields reported that they have found excellent career and training opportunities with this organization, regardless of their age.

Company Origins

The Farmers Insurance Group of Companies was founded in 1928 with the formation of Farmers Insurance Exchange, an automobile insurer. As customer demand for additional insurance services increased, the company established the Fire Insurance Exchange and Truck Insurance Exchange for home and commercial insurance needs.

Today, the Farmers Insurance Group of Companies is the country's third

largest writer of both private passenger automobile and homeowners insurance.

Farmers Insurance Group of Companies is based in Los Angeles, California, and operates in 41 states across the country through the efforts of approximately 18,000 employees. The company, which includes agents, independent contractors and independent agents, serves more than 15 million customers every year.

Martin D. Feinstein, chairman, president and chief executive officer, is a member of the Chamber Board.

EDD Awards Program

EDD's annual awards program, which is co-sponsored by the Chamber, helps to highlight the efforts of outstanding older workers and the best practices of employers of these individuals.

EDD launched the program in 1994 to increase public awareness of the important contribution older workers make to California's economy and to recognize employers who understand that mature workers bring knowledge, experience and reliability to the workplace.

Fish/Game Commission Declines to List Tricolor Blackbird as Endangered *Decision Averts New Restrictions for Central California Farm Operations, Other Projects*

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and major breeding areas include all the Central Valley counties, the California coast from Humboldt County in the north to San Diego County in the south, plus the lower Sierra Nevada foothills and western portions of San Bernardino and Riverside counties. In addition to uncultivated wetlands, the bird has been known to nest near dairies and in rice fields.

Other breeding populations have been seen in Oregon, Washington, Nevada and Baja California.

Lack of Evidence

The coalition noted that the petition from the Center for Biological Diversity failed to provide sufficient scientific evidence that there is a need to protect the tricolor blackbird.

In fact, information from other sources that published studies in 2004 (such

as the U.S. Geological Service Breeding Bird Survey) concluded the tricolor blackbird is not facing any threat of extinction, the coalition said.

Voluntary Efforts

A number of organizations have voluntarily formed a Tricolor Working Group to develop and implement conservation measures beneficial to the tricolor blackbird.

The coalition noted that the petition to list the bird failed to acknowledge existing efforts on its behalf, and that listing the bird would both interfere with cooperative efforts and discourage landowners from voluntarily managing their lands to benefit the tricolor blackbird.

Chamber Position

The Chamber believes application of endangered species laws should be

based on sound science.

California faces a crisis in how to provide enough private land for housing, agriculture, transportation and basic infrastructure needs, such as water, gas and electricity, in the face of ever-encroaching environmental laws, such as the federal and state endangered species acts.

The Chamber supports reforms to state and federal laws that achieve a balanced approach between environmental protection and socio-economic progress.

Not only should environmental regulations be based on sound science, subject to peer review, but economic impacts should be evaluated to ensure that the benefits outweigh the social costs of imposing mitigation measures.

Staff Contact: Valerie Nera

New for 2005

Introducing the new *Writing Your California Employee Handbook* 2005 software.

The wizard software can save you untold hours of research and writing and potentially thousands of dollars on consulting fees. In just one sitting, it will walk you through the step-by-step process of building a comprehensive employee handbook.

- Everything you need to build your 2005 employee handbook
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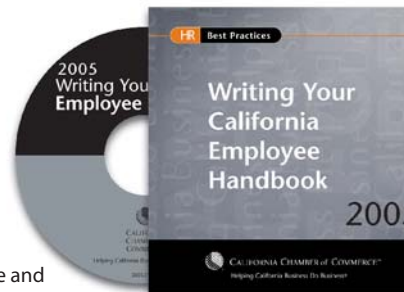
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