

ALERT

CALIFORNIA CHAMBER OF COMMERCE

VOLUME 31, NUMBER 10 • APRIL 1, 2005

Rating Bureau Suggests Workers' Comp Reductions

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) last week recommended a rate reduction of 10.4 percent, based largely on the impact of the California Chamber-backed reform legislation enacted last year.

Third Decrease

Although this rate reduction is only advisory and still requires approval by California's insurance commissioner, it will be the third rate decrease since Governor Arnold Schwarzenegger signed the reform bill, SB 899 (Poochigian; R-Fresno) in April 2004.

This proposed decrease was based on data from 2004 and does not yet contain information reflecting the emergency

permanent disability (PD) regulations that went into effect January 1. Studies of the impact on the new PD system will be complete in April and may reduce the proposed rate even more.

Good Sign

"These suggested rate reductions are a clear sign that the reforms contained in SB 899 are working," said Charles Bacchi, Chamber legislative advocate. "The workers' compensation system is improving, but there is still potential for more reductions once the savings from the PD schedule are factored in."

Although the WCIRB announcement shows a great improvement to the work-

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Bruce McPherson Takes Office as Secretary of State



Associated Press Photo

Bruce McPherson, with his wife, Mary (left), at his side, is sworn in as California secretary of state by Superior Court Judge Connie Callahan on March 30.

Former Senator Bruce McPherson, a Republican from Santa Cruz, was sworn in this week as secretary of state after winning a unanimous vote of confirmation in the Assembly.

The California Chamber of Commerce supported McPherson's confirmation — the final hurdle before McPherson assumed his duties, which include serving as the state's chief elections officer.

Fabulous Choice

"Bruce McPherson will be a fabulous secretary of state," said Chamber President Allan Zaremborg. "He has the experience and abilities to bring strength and dynamic leadership to the office. He is also a terrific person. Not only does he command the respect of all who know

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Chamber Sponsors Bill to Permit Paycheck Cards



John Benoit

The California Chamber of Commerce is **sponsoring** legislation to bring California pay practices into the 21st century.

AB 822 (Benoit; R-Riverside) expands employers' options for compensating

employees to include electronic paycheck cards.

Current Law

Current California law provides for only three ways in which an employer can pay an employee. The law states that

a worker can be paid:

- in cash, as long as a written or printed pay stub is provided;
- by paper paycheck and accompanying pay stub that must be cashable for free at some established place of business in the state, the name and address of which must appear on the paycheck (unless that business is a bank); and
- by direct deposit of the paycheck into a worker's bank account.

Available in Other States

Companies in other states already are using pay cards to compensate their workers. The process typically operates this way: The company establishes an account with a financial institution and deposits the employee's wages into that

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Labor Law Corner

'Regular Rate of Pay' for Determining Overtime Includes Many Factors



Gary Hermann
Labor Law Advisor

What is included in establishing a regular rate for the computation of overtime? Is it necessary to include the shift differential in calculating overtime? What about holiday pay and sick leave pay?

The regular rate of pay is not simply an employee's normal hourly amount.

The *regular rate* is a term used to mean the employee's actual rate once all hourly earnings plus many other types of compensation are considered.

In California, as with the federal Fair Labor Standards Act, overtime is computed based on the regular rate of pay.

Figuring 'Regular Rate of Pay'

The regular rate of pay includes many different kinds of remuneration — for example: hourly earnings, salary, piecework earnings, commissions, certain bonuses and the value of meals and lodging.

Any sum paid for hours worked must, of course, be included in the calculation. Also, any payment for performing a duty must be included.

For example, an employment contract may provide that employees who are assigned to be available for calls for specific periods will receive a payment of \$25 for each eight-hour period during which they are "on call" in addition to pay at their regular (or overtime) rate for hours actually spent in making calls.

If the employees who are thus "on call" are not confined to their homes or to any particular place, but may come and go as they please, provided that they leave word where they may be reached, the hours spent "on call" are not considered as hours worked.

Although the payment received by employees for such "on call" time is therefore not allocable to any specific hours

of work, it is clearly paid as compensation for performing a duty involved in the employee's job, and therefore, the payment must be included in the employee's regular rate in the same manner as any payment for services, such as an attendance bonus, which is not related to any specific hours of work.

Shift differential pay is obviously paid for hours worked and is therefore used in arriving at a regular rate.

Not Considered

Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work or other similar cause are not considered in the "regular rate."

Neither would reasonable payments for traveling expenses, nor other expenses incurred by an employee in the furtherance of the employer's interests or other similar payments to an employee that are not made as compensation for his/her hours of employment be considered part of the "regular rate."

For more information, see the California Chamber's *California Labor Law Digest*.

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.

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Chamber Calendar

International Luncheon Forum:

April 14, Sacramento

Luncheon Forum:

April 21, Sacramento

International Luncheon Forum:

April 26, Sacramento

Advocacy Council Spring Retreat:

April 26-27, Sacramento

Volunteer Leaders Conference:

May 24, Sacramento

Board of Directors:

May 24, Sacramento

California Business Legislative Summit:

May 25, Sacramento

Seminars

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

International

World Trade Week Breakfast. Los Angeles Area Chamber of Commerce. May 4, Los Angeles. (213) 580-7538.

Global Logistics Symposium. San Diego World Trade Center. May 18, San Diego. (619) 615-0868, ext. 109

Workplace Safety

Cal/OSHA Management and Compliance Strategies. Dufour Seminars. April 6, Burbank. (866) 312-8885.



Chamber-Sponsored 4-Day Workweek Bill Set for First Hearing in Assembly Committee



California Chamber of Commerce-sponsored legislation to permit individual non-union workers and their employers to mutually agree to a four-day

workweek is set to be heard by the Assembly Labor and Employment Committee on April 20.

AB 640 (Tran; R-Garden Grove) helps employees achieve greater flexibility in work schedules by allowing individual workers to request and their employers to mutually agree to a four-day workweek.

The Chamber believes permitting individual flexibility is one way employers can help workers find some relief from hectic days, long commutes, high gasoline prices and conflicting work and personal schedules.

Providing that flexibility in California, however, means the state first must change the law enough to permit four-day workweeks for individual workers who want to find a balance between their work and personal lives.

AB 640 will permit an individual employee, with the consent of his/her employer, to work up to 10 hours per day within a 40-hour workweek, with no overtime pay requirement.

Complex Current Law

Current California law requires that overtime compensation be paid for work performed by an employee in excess of eight hours in a single day, regardless of whether the employee works fewer than 40 hours in that week.

California is one of only four states that do not conform wage laws to the national Fair Labor Standards Act (FLSA). The FLSA bases its overtime compensation requirements for salaried, non-exempt employees on total hours worked per week, rather than total hours worked per day.

Under current and very detailed California Industrial Welfare Commission wage orders, employers may institute alternative work schedules only if the affected employees agree to the arrange-

ment in writing and by secret ballot.

Employers must hold discussion meetings at least 14 days before voting. Two-thirds of the company's employees must agree to the change. Any deviation from the rigidly controlled process voids the election.

The rules also state that daily work schedules are limited to a maximum of 10 hours per day, with a four-hour daily minimum. Variances in schedules or the use of more than one schedule is prohibited without repeating the voting process.

The complexity of the process in effect eliminates most employers and employees from choosing schedule options such as flextime, part-time, job sharing, telecommuting and compressed workweeks. Only a handful of California employers are trying to operate under the restrictive provisions of the Labor Code.

Unions Exempt

The daily overtime requirement doesn't apply to employees covered by collective bargaining agreements — these

include all state, county and city employees, such as those employed by school districts, water districts and a multitude of other governmental agencies.



Action Needed

The Chamber is urging all employers to write letters in support of AB 640 to Assembly Labor and Employment by April 20.

The Chamber is also encouraging employers and employees to testify in support of this bill before the committee.

Readers interested in testifying April 20 in Sacramento, please contact Ariel Calvert at ariel.calvert@calchamber.com for details, or call her at (916) 444-6670.

To download an easy-to-use sample letter in support AB 640 or other Chamber-sponsored legislation, please visit the Government Relations section at www.calchamber.com.

Staff Contact: Julianne Broyles

Chief Legislative Aide to Governor Recaps Schwarzenegger Reforms at Chamber Luncheon

Richard Costigan, legislative secretary to Governor Arnold Schwarzenegger, speaks to a capacity crowd at the California Chamber's Luncheon Forum on March 17. The talk by the Governor's top legislative aide has been an annual feature of the luncheon through several administrations. Costigan outlined the Governor's reform agenda, other legislative priorities and his unit's approach to dealing with legislation.



Chamber Sponsors Bill to Permit Paycheck Cards

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The employee is issued a pin number secured pay card at no cost and is not required to have a bank account to use the card. The cards are the same size as an ATM or credit card.

The employee is able to use the pay card just like an ATM or debit card. The employer prepays the transaction fee on a certain number of withdrawals per month, permitting the worker to access some or all of those wages without fees or discount. Workers are also provided with either a written or electronic copy of their pay stub. The worker keeps the card as long as he/she is employed by that business and the wages are automatically

added to the card on the worker's scheduled payday.

New Technology

"California needs to take advantage of new technologies that make new pay systems available," said Julianne Broyles, Chamber director of employee relations and small business. "An electronic pay card system offers benefits to both workers and their employers."

AB 822, as proposed to be amended, will establish the use of a pay card as another form of employer payment in the state Labor Code. The pay cards will work like direct deposit, but without requiring the employee to have a bank account.

The pay card option established in AB 822 will also benefit employers because the new process provides a convenient, low-cost way to pay workers.

The Chamber supports sensible change in state labor laws and regulations aimed at making workplace requirements easier to administer.

Staff Contact: Julianne Broyles

Bruce McPherson Takes Office as Secretary of State

From Page 1

him, he treats everyone he meets with the utmost respect."

As a member of the Assembly and Senate, McPherson had an excellent vote record on Chamber priority bills.

Governor Schwarzenegger appointed McPherson to succeed Kevin Shelley after the latter's resignation in February. The Senate Rules Committee confirmed McPherson on March 16 and the full Senate voted unanimously to approve his appointment the next day.

The Assembly Rules Committee first met on March 17 to consider McPherson's confirmation, then postponed its vote until this week to gather more information. The committee's vote to recommend McPherson's confirmation came just a couple of hours before the vote of the full Assembly.

The Chamber urged the business community to write letters to Assembly Rules in support of confirming McPherson.

The Chamber pointed out that McPherson is highly qualified for the position of secretary of state, with a great amount of experience.

While serving as a member of the Assembly, he was the chair of the Assembly Elections Committee and worked closely with state and local elections officials. He was at the forefront of providing for an open electoral process. McPherson authored the law that made campaign finance information publicly available over the Internet, and sponsored a bill to make the office of the secretary of state a non-partisan position.

Staff Contact: Dominic DiMare

Rating Bureau Suggests Workers' Comp Cuts

From Page 1

ers' compensation system, some employers still may not see the full effect of the recommended rate reductions. California insurance rates vary from company to company.

Many factors contribute to when businesses will see a decrease in rates, including: history of workplace injuries, changes to industry classifications for

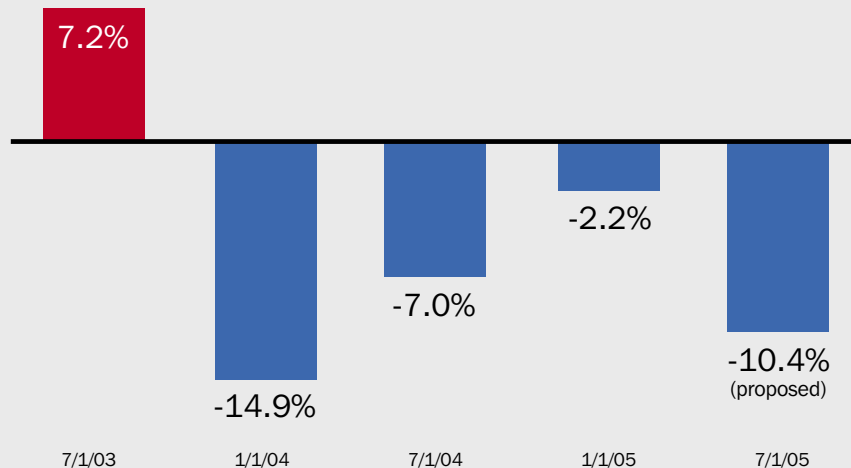
employees, projected liability for all policyholders, anticipated losses for policies, and the newly enacted reform laws and prospective regulations.

If the insurance commissioner approves the advisory rate in May, it will serve as the advisory rate for workers' compensation rates filed July 1.

Staff Contact: Charles Bacchi

Workers' Comp Reforms Showing Positive Results

Rate adjustments recommended by Workers' Compensation Insurance Rating Bureau



California Chamber Supports Legislation to Consolidate State Energy Agencies



The California Chamber of Commerce is supporting legislation that proposes consolidating, under one code, the various statutes that apply to electrical energy in

California. **AB 1190 (Canciamilla; D-Pittsburg)** establishes an Energy Agency by consolidating the numerous agencies and commissions that regulate energy under the direction of a single secretary of energy for California.

Need for Direction

Regulatory response to California's energy crisis in 2001 demonstrated the need for restructuring the state entities dealing with energy. The response was uncoordinated and lacked cooperation among the numerous energy agencies and commissions having jurisdiction over the energy market. California lacked a cohesive energy policy, leaving crisis management as the basis of the state's approach to energy.

"The lack of policy direction resulted in energy rates that are the highest in the western United States," said Dominic DiMare, Chamber vice president of government relations. "Furthermore, regulatory unpredictability has cut the flow of capital necessary to build much-needed energy generation by discouraging investors from putting resources here."

Stable Plan

The Chamber believes the consolidation proposed in AB 1190 is the best and most efficient way to ensure the durability of the state's Energy Action Plan, which the Chamber reported on earlier (see March 4 *Alert*). Under the direction of a secretary of energy, the Energy Action Plan stands a better chance of being fully implemented to guide regulatory efforts.

Implementation of the Energy Action Plan by the secretary of energy will return stability and confidence to the marketplace, allowing for increased investment in new projects.

"It is critical that we facilitate in-

creased investment and build additional generation or California could face many of the same challenges that plagued us during the crisis," DiMare said.

Chamber Position

The Chamber believes California needs more electrical generation and transmission infrastructure to keep pace with growing demand. The administration's 10-point energy plan includes elements the Chamber has long supported, including attention to adequate resources, rate relief for all customers, encouraging new transmission capacity, promoting load reduction, using renewable energy and developing new sources of natural gas.

AB 1190 is set for hearing on April 4 in the Assembly Utilities and Commerce Committee. For more information about the bill, including a sample letter to send to committee members in **support** of AB 1190, visit the Government Relations section at www.calchamber.com.
Staff Contact: Dominic DiMare

Franchise Tax Board Delays Action on Business Amnesty Plan Concerns

The state Franchise Tax Board (FTB) has once again delayed taking action to address concerns raised by the California Chamber of Commerce and other business organizations regarding the tax amnesty program.

The agenda for the board's March 29 hearing included seven clean-up proposals presented by the FTB staff. Two of the seven narrowed the scope of the amnesty penalties. The board tabled these two proposals until its next hearing in June — after the state's amnesty period has ended.

State Finance Director Tom Campbell made a motion to direct FTB staff to begin drafting regulations that would prevent "good-faith" taxpayers from being caught in the amnesty penalty trap. The Chamber and other organizations applauded Campbell for this effort.

But board members Steve Westly, state controller, and John Chiang, board chair, did not agree, and the motion failed.

Proposals Tabled

The two proposals tabled until June would have:

- attempted to address the concerns regarding tax deficiencies ensuing after the amnesty period had closed.
- sought to clarify the definition of the phrase "due and payable" to make it consistent with Revenue and Tax Code Section 19049 (which generally states that a deficiency becomes "due and payable" 15 days from the date the notice and demand of the final assessment is mailed to the taxpayer).

"The business community is disappointed the FTB has delayed action on these concerns. We believe that these

proposals were a good starting point for meaningful reform," said Erika Frank, Chamber legislative advocate. "We will continue to voice our concerns and push for amnesty reforms."

The five proposals adopted by the FTB included establishing a statute of limitations on collections, establishing discretion on extinguishing certain taxpayer debt, continuing the compliance requirement, providing technical clarification of certain amnesty provisions and clarifying issues relating to "netting" tax payments for amnesty purposes.

Business Concerns

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

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Chamber Offers New Way for Members to Help Elect Pro-Jobs Candidates

The California Chamber of Commerce is launching a new campaign that will have a significant impact on the Chamber's efforts to elect pro-jobs candidates.

Bipartisan Recruiting

For the first time, the Chamber will be conducting an aggressive, bipartisan candidate recruitment program for the 2006 election cycle.

The public employee unions and the trial bar are well ahead of the business community in this arena, but the Chamber believes it is possible to catch up if business begins now. The network of local chambers of commerce gives the Chamber a significant advantage in jump-starting the recruitment, and with more than 40 open seats in the state Senate and Assembly, this effort is critical.

To elect pro-jobs candidates in competitive races throughout the state, the Chamber needs the support of *all*

members. Accordingly, membership renewals will now include a request for a small ChamberPAC contribution, which members can include with their dues investment. Chamber member contributions will be pooled with those from other like-minded employers to maximize the business community's ability to have an impact on the 2006 elections.



Membership renewals will also include a flyer with additional details about ChamberPAC's campaign for the 2006 election

cycle and how a company's contribution can make the winning difference.

Share Information

Readers who receive the renewal notice but are not in the position to make a decision regarding a PAC contribution are encouraged to share the flyer with the appropriate person at the company.

The Chamber hopes members will welcome this opportunity to participate

in its new campaign to elect pro-jobs candidates. California's economic recovery depends directly on securing a pro-jobs majority in the state Legislature. With the help of *all* members, the Chamber can be a powerful and effective tool in strengthening the pro-business voice in the state Legislature.

For more information on ChamberPAC, visit the Government Relations section at www.calchamber.com.

Staff Contact: Michele Zschau

Franchise Tax Board

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March 31, 2005, with no exceptions or dispute allowed.

The new penalties associated with this program have been one of the business community's main concerns. These penalties 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.

Amnesty Program

To participate, a taxpayer must have filed an application by April 1 indicating for which years or tax reporting periods the amnesty is requested. The taxpayer has until May 31 to pay all taxes and interest owed, or enter an installment agreement.

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).

Staff Contact: Erika Frank

Advocacy Council

'Taking Initiative' to Be Focus of Spring Retreat



Bill Kristol

Sacramento will play host to the spring retreat of the California Chamber Advocacy Council, which will focus on "Taking the Initiative in 2005."

The retreat is set for April 26-27. Joining

the council for the opening reception and dinner on April 26 will be keynote speaker Bill Kristol, political strategist and analyst, best known as founder and editor of *The Weekly Standard*.

The April 27 program will include panel discussions featuring respected

political pundits and consultants, state legislators and representatives from the administration. Retreat participants will get an insider's look at the current political climate — including the Governor's reform agenda and the opposition's counterproposals — in addition to what to expect as the state heads into the 2006 election cycle.

Advocacy Council members can register for the retreat via the Chamber's website at www.calchamber.com. Space is limited, so don't wait to register — sign up *today!*

Readers who are not members of the Advocacy Council, but are interested in learning more about it and how to participate, please contact Drew Savage at (916) 444-6670, extension 277, or e-mail drew.savage@calchamber.com.

Join in the Chamber's bold new campaign to elect pro-jobs candidates



CALIFORNIA CHAMBER OF COMMERCE
POLITICAL ACTION COMMITTEE

A business-friendly majority in the state Legislature — one that can work with the Governor toward a pro-jobs agenda — is crucial to California's economic recovery. To help elect pro-jobs candidates and build toward this majority, the California Chamber of Commerce is engaging in an aggressive, bipartisan candidate recruitment program for the 2006 election cycle. As the public employee unions and the trial bar are well ahead of us in this arena, we need to act now to catch and surpass them. With more than 40 open seats in the state Senate and Assembly, this effort is critical.

By contributing to ChamberPAC, the Chamber's bipartisan political action committee, you can help pro-jobs candidates campaign and win in competitive races throughout the state. Even if these races are outside of your district, ChamberPAC provides a unique opportunity for you to pool your resources with those of like-minded employers to maximize the business community's impact on the 2006 elections. As you know, it takes a pro-jobs majority to continue California's economic turnaround.

Contributions — in any amount — will help strengthen the pro-business voice during the next election cycle. To join in this critical effort, please fill out the form below and send with your check to:

ChamberPAC (ID #950352)
California Chamber of Commerce
1215 K Street, Suite 1400
Sacramento, CA 95814

Please be sure to include the following information, which is required by law: contact name, occupation, employer, mailing address and phone number.

Thank you for your support!

For more information, please call (916) 444-6670, extension 275.

*Name _____

*Mailing Address _____

*Mailing City _____

*Mailing State _____ *Mailing Zip Code _____

*Phone _____ Work Phone _____

Fax _____ E-mail _____

*Occupation _____

*Employer _____

Contribution _____ Payment Method Check Credit Card

Credit Card Account # _____ Exp. Date _____

Signature _____

NOT DEDUCTIBLE AS A CHARITABLE EXPENSE.

Make check payable to: ChamberPAC, ID #950352, c/o California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814

*Required by law

MAY 24-25, 2005

California Business Legislative Summit

SACRAMENTO CONVENTION CENTER

Employers and business owners — Don't miss out on this opportunity to learn how you and your company can have an impact on decisions at the state level.

HOT ISSUES

- Updating Infrastructure (highways, housing, energy, ports)
- Stopping Lawsuit Abuse (including Americans with Disabilities Act reform)
- Battling Health Care Costs
- Building Strong Grassroots Political Action
- Removing Barriers to Workplace Progress
- Reforming Policy through Ballot Initiatives

Register today at www.calchamber.com, or for additional information, contact Amy Orr at (916) 444-6670, ext. 263 or e-mail events@calchamber.com.



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