

ALERT

CALIFORNIA CHAMBER OF COMMERCE

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Chamber Opposition Helps Stall Many 'Job Killer' Bills

But Vast Majority Continue to Move in Legislature



Opposition from the California Chamber of Commerce helped stall 11 of this year's "job killer" bills, preventing them from moving out of their house of origin.

Republicans and moderate Democratic legislators in the Assembly showed they recognize the need to balance protecting the environment with protecting the economy by preventing passage of "job killers" expanding the potential for frivo-

lous litigation on alleged violations of permits, regulations and statutes (AB 528 - Frommer; D-Glendale); adding to the regulatory complexity surrounding ports (AB 1101 - Oropeza; D-Long Beach); and eliminating a pro-jobs environmental program (AB 1430 - Goldberg; D-Los Angeles).

"Delaying these 11 proposals from becoming law this year is a good start toward preventing further harm to the economy," said Dominic DiMare, Chamber vice president of government relations. "Legislators should focus now on

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The California Chamber of Commerce is urging legislative leaders and the budget conference committee to take action and restore to the budget the \$7.3 million in match-

ing state funds for tourism marketing that Governor Schwarzenegger has proposed.

"The tourism industry is important to California's economy and brings billions of dollars to the state," said Charles Bacchi, Chamber legislative advocate. "Supporting the Governor's recommendation and creating a robust state and private sector partnership is a huge step in keeping California competitive with other states and provides strong economic returns."

Matching Funds

Historically, the tourism industry has assessed itself to raise private funds for marketing California. These private funds were matched by state funds to reflect the increased tax revenue the state receives from visitors in a public-private partnership.

However, California's budget crisis has resulted in two years of no state contribution to the tourism marketing act. This has left private businesses raising approximately \$7 million in marketing

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PUC Needs Modernizing, Member Says



Susan P. Kennedy, a member of the California Public Utilities Commission (PUC), says if California is going to be a technology leader, an overhaul of the regulatory process for telecommunications is critical. See guest commentary on Page 3 and read the full text of her remarks at www.calchamber.com.

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Labor Law Corner

Premium Rate Payable Even If Overtime Not Approved in Advance



Ed Levine
Labor Law Advisor

Our policy requires that all overtime be approved in advance. If an employee works overtime without authorization, are we required to pay the overtime?

Yes. Under California law it is necessary only that the employee be subject to the control of the employer in order to be

entitled to the overtime premium compensation.

IWC Orders

State law requires that employees be paid for "hours worked," defined by the Industrial Welfare Commission Orders as all time during which an employee is subject to the control of an employer, and including all the time the employee is permitted to work, whether or not required to do so.

Employer Policy

An employer should not rely on a policy — even a written one — that all overtime must be pre-approved to allow employees to work overtime without approval, when the employer considers the work necessary, and then deny pay-

ment on other occasions when approval was not obtained before the work was performed.

The policy should indicate that the requirement for pre-approval will be enforced through disciplinary procedures and should not include a threat of non-payment for non-authorized overtime.

When an employee works overtime without the required prior approval, the employer should pay the premium wages and take disciplinary action for the failure to comply with the employer's policy.

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-Sponsored Seminars

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

Business Resources

Annual Conference. Society for Human Resource Management. June 19-22, San Diego. (800) 283-7476.

Effective Board Dynamics for Non-Profit and For-Profit Directors. National Association of Corporate Directors, Northern California Chapter. June 22, Sacramento. (916) 977-3700.

International

Evening with His Excellency Dr. Montassar Quaili, Minister of Communication Technology, Tunisia. National U.S.-Arab Chamber of Commerce. June 16, Palo Alto. (202) 289-5928.

Mexico and China Conference, Offshore Manufacturing — Country Analysis. *Mexico Now Magazine*. June 28-29, San Diego. www.mexico-now.com.

Discount on Employment Background Screening

The California Chamber of Commerce has formed a partnership with HireRight to provide online employment background screening services at a discount.

Through this program, Chamber members will receive a 15 percent discount on HireRight's one-stop shop of employment background screening services.

The web-based services provide the tools to make informed hiring decisions. HireRight offers users the peace of mind of employing an industry leader, plus the convenience of working with a single ser-

vice provider for background screening.

HireRight's comprehensive employment screening services are accessible via the Internet with all results provided in an integrated, web-based report.

Services available include criminal records checks, employment and education verification, professional reference checks, credit and motor vehicle record checks, drug screening and other specialized verification services.

For more information, visit www.hrcaifornia.com, or call (800) 649-4921.



Big Stake for Business in Modernizing PUC



This guest commentary was adapted from remarks made to the California Chamber Board of Directors on May 24.

We regulate companies in California with direct revenues of more than \$45 billion a year. When you count the indirect impact our regulations have on businesses in the state, through such things as electricity and phone rates, telecom investment, and natural gas supplies, we impact \$70 billion a year in economic activity.

The problem is that the industries regulated by the Public Utilities Commission (PUC) today have changed dramatically in the last decade, but the way we regulate — and regulatory thinking — has not.

The mismatch between the forces of a dynamic, competitive industry and regulations designed for a bygone era is pronounced in the world of telecommunications. The technology is changing faster than we can understand it, let alone regulate it.

The impact of our decisions on your businesses is almost as great as it is in electricity — only much less visible.

For example, Pacific Bell filed its application to enter the long-distance market in California in 1998 — a little more than a year after the federal Telecom Act opened the market to competition. After two full years of review, the California PUC decided to hold additional hearings, adding nearly three years to the process.

Most states spent an average of 18 months reviewing these applications. In California, the process took nearly five years. The rates for long distance dropped from 7 cents per minute to about 3 cents per minute after Pacific's entry into the market was approved.

Californians spent \$10 billion a year on long distance back then. You do the math on how much three years of regula-

tory delay cost California businesses and consumers.

This list goes on and on. Every new offering, every enhancement to an existing service every time they want to lower prices below Commission-established price floors — they have to file a request with the Commission, allow their competitors to file protests, file cost studies or wait for us to hold hearings, wait for final approval from the Commission, then give

Guest Commentary By Susan P. Kennedy

30 days notice to their competitors. . . .

Can you even imagine waiting nine months to lower prices or offer a new service in response to competition in your business?

And these are the rules for one of the most dynamic, fiercely competitive industries in the world right now. This is not federal statute, or state law — these are California regulations.

Overhaul Needed

If California is going to be a technology leader, and a good place to do business — it is critical that we overhaul the regulatory regime for telecommunications.

In the last few years, technology changes have unleashed a flood of advanced services that makes traditional regulation of voice services impossible. Cable companies are offering phone service. Phone companies are offering video; Internet providers offer all-you-can-eat calling plans. Wireless carriers offer e-mail, Internet access and even video news delivered on your cell phone.

More than 17 other states, including Iowa, Utah, Missouri, Texas — even Alabama — have already begun to overhaul their telecom regulations in order to attract investment in new technologies.

Two Views of Regulation

But instead of updating our regulations, here in California we have been engaged in a titanic struggle between those who want to maintain and expand existing regulation and those, like me, who believe regulators need to get out of the way in order to unleash innovation and investment.

There are two views of the world right now:

- Those who see an industry moving toward a “duopoly” of superpowers, with the giant regional Bells squaring off against giant cable companies. They don't see competition, they see a battle between huge monopolies.

- Others see a fiercely dynamic market where competition can no longer be measured by access lines, and “telecommunications services” can't even be defined, let alone measured in terms of market power. They see the proliferation of new technologies such as VoIP and wireless broadband as revolutionizing customer choice and irreversibly placing market power in the hands of the consumer.

As a regulator, which world we believe we live in is a critical question, because it dictates whether we should be expanding or relaxing regulation.

With Governor Schwarzeneg-

ger's appointments to the PUC this year, I believe that there is a majority willing to take on the status quo.

As many of you know, the PUC voted to suspend a massive expansion of regulation onto wireless carriers and Internet phone providers.

The Legislature is not happy with us and is pushing a bill to force us to reinstate all 250 pages of those regulations and then some.

We voted to rescind our appeal of an FCC [Federal Communications Commission] decision that bars states from applying traditional regulation to new technologies like Internet telephony.

We're under a lot of fire from legislators for making these decisions.

Billions in Investments

We've got three major proceedings before us in the coming months that will chart the course of literally billions of dollars in technology investments in California:

**Read full text of
remarks at
calchamber.com**

Chamber Calls for 'Safe Harbor' Provision in Federal ADA Facility Access Guidelines



The California Chamber of Commerce is opposing proposed federal revisions to facility access guidelines for the Americans with Disabilities Act (ADA), and is urging regulators to include a "safe harbor" for buildings that con-

form to previous guidelines.

In comments submitted to the U.S. Department of Justice (DOJ), the Chamber states that the proposed revisions will place unreasonable new compliance mandates on businesses, especially small businesses, and could open the door to increased litigation and liability costs for all businesses in California, regardless of size.

The Chamber is urging the DOJ to reject the proposed revisions, keep the ADA guidelines as they are currently and be sure to include a strong "safe harbor" provision for buildings and facilities that already have been modified to conform to previous federal guidelines or that were built in accordance with those guidelines.

"It is unreasonable to require businesses that have already spent large sums of money to comply with the current ADA guidelines to spend even more on these new requirements," said Julianne Broyles, Chamber director of employee relations and small business. "That is why the

'safe harbor' provision is so important. Businesses that are currently in compliance with the ADA would be left open to numerous lawsuits if these guidelines are adopted without such a provision."

Background

On July 23, 2004, the U.S. Access Board issued new federal accessibility guidelines (ADAAG), which will have a substantial, negative impact on all businesses in California and throughout the country.

The revised guidelines make hundreds of changes, which if adopted, all businesses must implement to ensure that areas of their businesses open to the public comply with all the proposed changes. This would affect almost every type of business open to the public, including retail, hotel, restaurant, medical, educational and recreational facilities, theaters/stadiums, convention halls, banks, gas stations, museums, grocery stores, amusement parks and day care centers. The guidelines also cover state and federal government buildings.

Cost to Employers

In its comments, the Chamber emphasized that the overall costs of complying with the revised guidelines are potentially huge, while the benefits of many of the guidelines are questionable. None of these costs are reflected in the analyses

included with the revised guidelines or the notice of the federal agency's intent to adopt them.

ADA Litigation Growing

The Chamber also stressed its concern that the revised guidelines will be used as the basis to fuel even more ADA litigation in California. Businesses of all types and sizes in the state have been targeted with ADA "shakedown" lawsuits by what they call "frequent filers."

These "frequent filers" target businesses and file look-a-like lawsuits where a single plaintiff and his/her lawyers file lawsuits alleging the same violation against numerous small businesses in a particular area in order to force a settlement.

Support for ADA

The business community supports the original goal of the federal ADA, which was designed to open doors for people with disabilities. The Chamber believes, however, that the proposed ADAAG fails to meet that goal, and instead may force businesses to close their doors altogether due to increased compliance burdens and litigation.

For more information on the federal ADA guidelines or proposed revisions, please visit the DOJ website at www.ada.gov/adahom1.htm.

Staff Contact: Julianne Broyles

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- the mergers of SBC and Verizon with AT&T and MCI;
- a rewrite of the consumer protection rules we suspended in January; and
- a new proceeding we opened last month that will allow us to completely overhaul the way we regulate telecom companies in California.

There is a tremendous amount of pushback on all fronts. Those of us working for change at the Commission are fighting:

- the Legislature, which can pass a bill

or cut our budget whenever they disagree with a decision;

- an institutional culture at the Commission that is 100 years old and eats reform-minded commissioners for sport;
- consumer groups who don't want any relaxation of regulations no matter how old or useless; and
- finally, competitors themselves — who gain some toehold of market advantage in the status quo.

Business Should Weigh In

My message to you is this: You need

to care about what we do. The California Chamber has been an important ally in many of these battles. If your companies don't weigh in on how important California's technology infrastructure is to the future of our state — if you don't care enough to make it a priority with legislators or the Governor — neither will anyone else.

Susan P. Kennedy is a member of the California Public Utilities Commission. The full text of her remarks is available at www.calchamber.com.

More Good News on Workers' Comp Rates as Insurers Propose Significant Reductions

The month began with more good news on workers' compensation rates as the Insurance Commissioner recommended a higher rate reduction and a number of insurers submitted proposals for dramatic rate reductions starting July 1.

Both announcements are signs that the California Chamber-supported system overhaul signed by Governor Arnold Schwarzenegger last year is bringing employers relief from skyrocketing costs.

Future Reductions

"We are still moving in the right direction," said Chamber President Allan Zaremberg. "As the regulations continue to be fully implemented, we expect that rates will continue to drop. We encourage the Legislature to resist strongly any pending proposals that would derail these reforms. California's employers are

finally beginning to see the relief they so desperately need to keep their doors open to continue to create jobs in our state and to help keep California's economy on the road to recovery."

Insurance Commissioner John Garamendi's recommendation for an 18 percent rate reduction came just two weeks after the Workers' Compensation Insurance Rating Bureau suggested rates be reduced by 13.8 percent. This is the third rate decrease since the Governor signed the Chamber-supported reform bill, SB 899 (Poochigian; R-Fresno) in April 2004.

So far, five insurance carriers have filed rates with the California Department of Insurance showing decreases ranging from 10.4 percent to 18 percent. Industry observers predict that other rate filings may exceed 20 percent.

Degrees of Relief

Although the announcements to date reflect a great improvement to the workers' 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.

The rate decrease announced by Garamendi is the advisory rate for workers' compensation premiums filed July 1.

Staff Contact: Charles Bacchi

U.S. District Court Agrees ADA Lawsuit Filer Is 'Vexatious Litigant'



A U.S. District Court has agreed with a San Diego car dealership that a plaintiff who has filed numerous lawsuits alleging access violations under the Americans with Disabilities Act is a

claims...to harass businesses into quickly entering into cash settlements."

Court Order

The court order requires that before Carlock files a complaint, he must provide the potential defendant with written notice of alleged ADA violations and the intent to file a lawsuit at least 30 days in advance of filing a complaint; and apply to the district court for permission to file the complaint, including with the application a copy of the 30-day written notice to the defendant, a copy of the Southern District Court order and a declaration from an ADA consultant that the ADA violations continue to exist at the defendant business.

The Southern District Court took on the case upon a request from Collins Motors, Inc., a small used car dealership in San Diego that was the target of a lawsuit by Carlock.

The court opinion pointed out that Carlock's previous lawsuits included "nearly identical" allegations and legal bases to the complaint against Collins,

with many of the lawsuits involving injuries to Carlock on the same day or within a close time at different locations and resulting in the filing of multiple complaints. Sixty-nine of the previous lawsuits had been settled.

Chamber-Backed Reform

Reports of ADA lawsuit abuses such as those cited in the Carlock case led the California Chamber of Commerce to sponsor reform legislation, SB 855 (Poochigian; R-Fresno). The bill requires a specific notice of intent to sue and a brief period of time where a business can repair an ADA access problem.

The Senate Judiciary Committee rejected the bill last month, but granted it reconsideration.

The Chamber continues to support 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.

Staff Contact: Julianne Broyles

"vexatious litigant."

The plaintiff, Gaynor Carlock, has filed 120 ADA lawsuits in the district courts of the Central and Southern Districts of California over a three-year period, according to the ruling by the U.S. District Court for the Southern District of California.

The Southern District Court noted that plaintiff Carlock and his attorney, Roy Landers, "have actively engaged in the lucrative 'cottage industry' of filing ADA

Chamber Opposition Helps Stall Many ‘Job Killer’ Bills



From Page 1

stopping the remaining ‘job killer’ bills and keeping California on the road to recovery.

If lawmakers don’t reject the many ‘job killers’ still moving, all

Californians will suffer from the huge detrimental impact on the economy, because these bills will drive jobs out of our state.”

The Coalition for California Jobs (CCJ), a Chamber-led coalition of employer groups focused on stimulating job creation in California, released this year’s list of 41 “job killer” bills last month. CCJ releases this list annually to shine a light on legislation that will hamper California’s economic growth and cost jobs.

The Chamber and CCJ will continue to work to ensure legislators understand the severe impact the “job killers” would have on California’s economy.

Action Unlikely This Year

The 11 “job killer” bills that are now two-year bills — in effect not likely to be considered again until next year — are:

- **AB 528 (Frommer; D-Glendale) Predatory litigation.** Increases predatory lawsuits and opens the door to the very type of litigation the voters of California sought to stop through the passage of Proposition 64 by expanding the potential for frivolous litigation on alleged violations of permits, regulations and statutes.

- **AB 802 (Wolk; D-Davis) General plans cost increase.** Slows development of affordable housing and increases opportunity for unnecessary litigation by forcing local government to integrate two incompatible planning processes.

- **AB 1101 (Oropeza; D-Long Beach) Ports: regulatory complexity.** Hampers operations at ports, rail yards, distribution centers and airports by shifting regulatory authority over emissions from state to local entities, creating a patchwork of potentially inconsistent regulations statewide, creating conflicts with federal law.

- **AB 1430 (Goldberg; D-Los Angeles) Elimination of pro-jobs environmental program.** Limits job creation and worsens the state’s air quality problems

by eliminating current emissions reduction trading programs, which provide balance between job growth and the environment.

- **AB 1549 (Koretz; D-West Hollywood) Workers’ compensation; unqualified medical providers.** Increases costs and uncertainty in the workers’ compensation system by allowing unqualified medical providers like acupuncturists to determine disability and inappropriately become Independent Medical Reviewers — giving them the power to overrule medical decisions by doctors.

- **AB 1644 (De La Torre; D-South Gate) Tax credit elimination.** Increases taxes, making California unattractive to cutting-edge industries by eliminating certain tax credits and reduces California’s business competitiveness by restricting the tax treatment of subchapter “S” corporations, costing California employers approximately \$900 million.

- **AB 1700 (Pavley; D-Agoura Hills) Proprietary information.** Exacerbates an already-hostile legal environment by impeding a business’ ability to maintain the confidentiality of its proprietary information.

- **SB 17 (Escutia; D-Norwalk) Property tax increase.** Increases property taxes on business when more than 50 percent of ownership changes and imposes burdensome reporting requirements and harsh tax penalties for errors.

- **SB 497 (Simitian; D-Palo Alto) Construction industry; cost increase.** Potentially destroys California’s construction industry by requiring specified off-road equipment engines be repowered with newer engines within a specific time frame in order to be eligible to bid for a state infrastructure contract.

- **SB 593 (Alarcón; D-San Fernando Valley) Health care cost increase.** Increases costs to California’s businesses by unfairly implementing a tax on certain employers to reimburse the state for the costs incurred in providing health care coverage to the employer’s employees and their dependents who are enrolled in the Healthy Families Program or Medi-Cal.

- **SB 870 (Escutia; D-Norwalk) Employer penalties.** Restricts flexibility for local agencies to assess penalties that fit the infraction for certain air quality violations, and directs the majority of those

revenues to an unrelated program.

Amended to Remove Opposition

Two “job killer” bills were amended by the authors to move them off the Assembly floor and amendments have been proposed to a third for the same reason. With the amendments, the Chamber no longer considers these proposals to be “job killers” and is now neutral on the bills:

- **AB 1406 (Karnette; D-Long Beach) Ports and harbors: fee increase.**

When introduced, this “job killer” would have increased the cost of goods movement by adding a \$10 fee on all containers moving through the ports. As amended, the measure

no longer has fee authority and simply requires the Office of Homeland

Security to establish a grant program to enhance security at the ports.

- **AB 1407 (Oropeza; D-Long Beach) Fuel tax.** When introduced, this “job killer” would have added a 5 cents per gallon tax on the sale of off-road diesel fuel. As amended, the measure requires the state Air Resources Board to study the impacts of imposing a 5 cents per gallon tax on off-road diesel.

- **AB 1007 (Pavley; D-Agoura Hills) Potential fuel cost increase.** This former “job killer” would have created the potential for a significant fuel cost increase and required the California Air Resources Board to develop and adopt a plan to transition away from petroleum-based products, abandoning the state’s policy of fuel neutrality. As proposed to be amended, the bill will require only that specified agencies develop plans on how to increase the use of alternative fuels and decrease the state’s dependency on petroleum.

More Information on Website

For more information and updates on the 2005 “job killer” bills, including those that continue to move, visit www.calchamber.com/jobkillers.

Staff Contact: Dominic DiMare

See ‘job killers’ still moving at calchamber.com/jobkillers

Stanford Mansion to Reopen, Providing Official State Meeting Place

This summer, the newly renovated Stanford Mansion will reopen for business in Sacramento, serving as California's official address for state diplomatic and business receptions.

Renovation of the Stanford Mansion will provide a diplomatic meeting place outside the State Capitol, giving the mansion a dual role: it will be used by the Governor and the legislative leadership for state functions, as well as be a publicly accessible historic house museum operated by California State Parks.

Official Uses

The Stanford Mansion will continue to house the Governor's Office of Protocol under the direction of Chief of Protocol Charlotte Mailliard Shultz.

The reopening of the mansion also will provide another venue for the California Chamber of Commerce and other business organizations to host important meetings. Located within a few blocks of the State Capitol, the mansion will serve as an ideal location for such events.

Renovation

The building's extensive renovation is the result of a partnership between California State Parks and the Leland Stanford

Mansion Foundation, which have worked together to raise the nearly \$20 million in renovation costs. Formed in 1991 by business and political leaders, the public-private partnership grew out of the state's need for an official place to conduct state business.

Once restored, the mansion will be permanently maintained and managed by California State Parks. The foundation is creating a \$2 million endowment to help cover major curatorial needs and support programs it hosts in the mansion that help to foster business development for California.

Distinguished History

Built between 1856 and 1858, the four-story, 19,000 square-foot Stanford Mansion has special historical and architectural significance. It was the home of the influential Stanford family and served as the office of three governors during California's early years: Leland Stanford, Fredrick Low and Henry Haight. It was also the site of California's first presidential visit by Rutherford B. Hayes and General Sherman in the late 1800s.

For additional information about the Stanford Mansion, please visit www.stanfordmansion.org.



Following extensive renovation, the Stanford Mansion in Sacramento will reopen this summer, serving both as the state's official diplomatic meeting place and a historic museum open to the public.

Chamber Urges Action to Restore Tourism Marketing Funding

From Page 1

funds, placing California 31st in the nation in promotion. As a result, the state's share of domestic travel has dropped.

Earlier this year, Governor Arnold Schwarzenegger proposed a return to the public-private partnership with \$7.3 million in state funds for the 2005-06 budget. Unfortunately, although each house of the Legislature approved more than \$7 million in state funding, the entire funding was stricken by the budget conference committee.

Economic Impact

The travel, tourism and entertainment industries all play an important role in helping California's economy get back on track. California tourist attractions are a major draw for state residents, as well as residents from the rest of the nation and the world.

A recent study commissioned by the state shows that every dollar invested in promoting travel to California returns \$19 in state and local taxes.

In 2004:

- total direct travel spending in California was \$82.5 billion;
- travel spending in California directly supported 892,600 jobs and generated 261,500 jobs in food service, 220,500 jobs in arts, entertainment and recreation, and 192,200 jobs in accommodations; and
- travel spending also generated \$1.9 billion in local taxes and \$3.3 billion in state taxes, of which approximately \$500 million was tax revenue from motor fuel.

The Chamber believes that restoring the state's share of funding this public-private partnership for tourism marketing will benefit the California economy, the travel, tourism and entertainment indus-

tries, and ultimately will yield added revenues for the state.

Action Needed

The Chamber is encouraging all employers to write or call members of the budget conference committee and the legislative leadership to urge them to restore the \$7.3 million in tourism marketing funds that was deleted by the conference committee.

To send a letter, visit the Government Relations section on the Chamber's website at www.calchamber.com.

Staff Contact: Charles Bacchi

**Sample letter at
calchamber.com**

Sexual Harassment Training Is Now Mandatory

California law, AB 1825, now mandates two hours of sexual harassment training for supervisors before January 1, 2006 for companies with more than 50 employees. Online training is an easy, cost-effective way to protect your company.

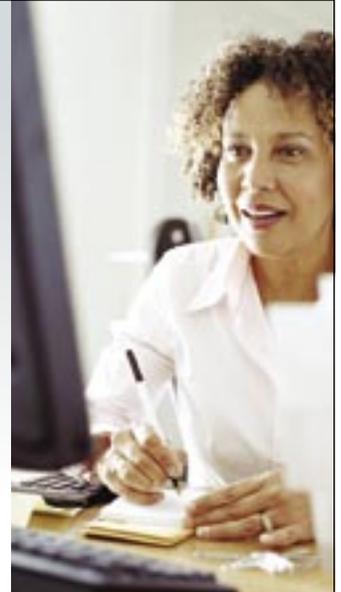
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