

ALERT

CALIFORNIA CHAMBER OF COMMERCE

VOLUME 31, NUMBER 27 • SEPTEMBER 2, 2005



Legislators Begin Sending 'Job Killers' to Governor



Over the objections of colleagues who highlighted the need to foster a pro-jobs climate in California, legislative majorities in both houses began sending to the

Governor this week California Chamber **opposed** legislation that makes it more difficult for employers to do business in the state.

The Assembly approved and sent to the Governor legislation establishing new types of "sue your boss" lawsuits, **SB 174 (Dunn; D-Garden Grove)**.

The Senate sent to the Governor a bill providing unemployment insurance (UI) benefits to workers unemployed due to a

strike, **AB 391 (Koretz; D-West Hollywood)**.

More "job killer" bills awaited action by the full Assembly or Senate as *Alert* went to press.

New 'Sue Your Boss' Lawsuits

The Chamber considers SB 174 a "job killer" because it increases employer liability by

providing new incentives for plaintiffs and their attorneys to file lawsuits by

See Legislators: Page 4

**Updates at
calchamber.com/
jobkillers**

Senate Rejects Nominee for Air Board Chair

On a largely partisan vote, the Senate on September 1 rejected confirmation of attorney and registered professional engineer Cynthia Tuck as chair of the California Air Resources Board (ARB).

"It's disappointing that environmentalists opposed Cynthia's nomination because she is balanced as opposed to having a bias," said California Chamber President Allan Zaremberg. "Her technical background, personal integrity and professional approach to problem solving made her an easy and natural choice to chair the ARB."

Governor Arnold Schwarzenegger, who nominated Tuck to the position earlier this summer, released a statement noting that the Senate action "has denied

See Senate: Page 4



Cynthia Tuck

Red Cross Seeks Business Support in Recruiting Disaster Relief Volunteers

Hurricane Katrina has left in its wake the urgent need for volunteers to help with disaster relief efforts. The American Red Cross already has mobilized thousands of willing people to meet the needs of the affected areas, but more assistance is required.

The national relief organization already is sheltering nearly 40,000 evacuees in more than 230 shelters and serving approximately 500,000 hot meals each day, according to agency statistics.

The Pacific Service Region's goal is to send 125 volunteers a day to the relief operation. The organization is recruiting people for intensive training and deployment and is holding special 'crash course' training sessions for new volunteers.

California employers can support and assist with this massive recovery effort by allowing employees interested in volunteering to take time off to train and to serve with their local Red Cross agencies.

Volunteers can expect to be deployed for up to three weeks, according to the Red Cross. The Red Cross will be sending people to five states affected by the hurricane and flooding.

The Red Cross points out that giving employees time to volunteer not only benefits the community, but also allows employees to gain valuable experience and skills — from administration and

See Red Cross: Page 4

Inside

Chamber Supports Fuel-Neutral Air Policies: Page 5

Labor Law Corner

Pay Due for Workplace Orientation Specific to Company



Susan Kemp
Senior Labor Law
Counsel

Is an employer liable to job applicants for compensation for time spent in an orientation program that explains the company, what it does and some of the benefits of working for the company?

If the employee is asked to attend the orientation session after s/he is hired and

has completed all employment paperwork, the time constitutes "hours worked" and is compensable.

To be considered non-compensable, pre-employment training must be an essential part of an established course of an accredited school or institution that is approved by a public agency to provide training for licensure or to qualify employees for a skilled vocation or profession. The work performed cannot be work that otherwise would be performed by bona fide employees. A course specifically tailored to practices of the employer would not qualify as non-compensable training.

Orientation or Testing

There are situations, however, where an employer may wish to orient applicants or to have a prospective employee demonstrate her/his skills.

For example, applicants might view a short video that describes the company and employment benefits or might have necessary job skills — such as typing, shorthand or operation of machinery — tested. Such time is non-compensable.

'Try-Out Time'

The Labor Commissioner will not consider try-out time as "hours worked" if:

- the time is not, in fact, training, as opposed to skills testing;
- there is no productivity derived from any work performed by the applicant; and
- the period of time is reasonable under the circumstances.

As one example, an applicant for a truck driving position may be asked to drive the truck around the facilities or around the block to exhibit his/her truck

driving skills. This circumstance is a testing of applicant skills that would be non-compensable.

In another example, a driver applicant may be asked to ride with another driver on a long haul to share the driving duties. This situation requires that the applicant actually perform work and would, therefore, be considered compensable "hours worked."

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

ExecuNet Networking Breakfast. Wilcox, Miller & Nelson. September 13, Sacramento. (916) 977-3700.

How Are We Doing? Evaluating For-Profit and Not-For-Profit Boards and Directors. National Association of Corporate Directors, Sacramento Chapter. September 22, Sacramento. (916) 977-3700.

2005 Northern California Human Resources Association (NCHRA) Annual Conference and Trade Show. NCHRA. September 26-27, Oakland. (415) 291-1992.

Government Relations

Southwest California Legislative Summit. Temecula Valley Chamber of Commerce. September 30, Temecula. (866) 676-5090.

International

U.S.-Kazakhstan Trade Conference — Industrial and Innovation Strategy: New Business Opportunities. Embassy of Republic of Kazakhstan. September 8-9, San Diego. (202) 857-9736 or (415) 596-0804.

Forecast on Latin America and the Caribbean. U.S. Chamber of Commerce. September 19-20, Washington, D.C. (202) 778-2402.

Chamber Calendar

Board of Directors:
September 8-9, La Jolla

**Next Alert:
September 16**

Small Business Advocate of Year Award

Advocate Working to Strengthen Power, Voice of Small Business

Matt Kinley respects the power of small business, a power he knows affects people's lives on an immediate and daily level. This respect pushes him to be an unflagging advocate for local and state businesses.

Kinley, a recipient of the California Chamber of Commerce Small Business Advocate of the Year Award, is a partner at Tredway, Lumsdaine & Doyle, LLP, in Long Beach, where he litigates on behalf of individuals and entrepreneurial businesses on breach of contract, unfair competition, trade secrets, intellectual property issues, and other business torts.

"Matt's tireless dedication of personal time to the improvement of business and economic conditions in the region has earned him the recognition and praise of local leaders and business owners in Long Beach," says Randy Gordon, president and chief executive officer of the Long Beach Area Chamber of Commerce, who nominated Kinley for the award.

Natural Extension

A graduate of the University of California, Los Angeles, and Loyola Law School, Kinley sees small business advocacy as a natural extension of his profession.

"I have a natural sympathy for people who are doing business, particularly smaller businesses. They are the most vulnerable and need the most protection," Kinley says.

In fact, issues affecting small and medium-sized businesses "get my dander up the most," he says, especially in the legislative arena, where lawmakers "demonstrate their lack of understanding about what businesses go through."

Kinley comments, "Most businesses do their best to keep their employees happy and healthy and prosperous. Take workers' compensation. Employers want to get employees healthy, but legislators see the situation as adversarial. Most relationships aren't like that."

Extensive Local Involvement

On a local level, Kinley is heavily involved with the Long Beach Area Chamber. He is chair of the chamber's Government Affairs Committee (GAC),

and vice chair of the Public Policy Committee, which oversees the GAC and three political action committees. Kinley also created the chamber's health care subcommittee to help write the organization's health care policy platform, and oversees the legislative tracking process and legislative vote record.

Through the GAC, Kinley helped to found the Center for Judicial Advocacy, which provides the Long Beach business community with information from a chamber point-of-view regarding pending court cases and recent court decisions that might have an impact on the city's business climate. The center will begin to file friend-of-the-court briefs on key business-related cases by the end of the year. The hope is to create lasting and far-reaching changes to legal matters touching businesses in Long Beach and around California.

Business Is Better

In general, Kinley is fairly pleased with the way business is going in the state: "I think it's a lot better. Overall, it's improving. People feel like they don't have to move out of the state anymore. The government is making changes to support them."

In particular, he thinks people are feeling better about workers' compensation: "It's looking up," he says. "You don't hear about it as much. It used to be the Number One complaint." He also believes the real estate boom and real property expansion are helping keep businesses in California.

Some things still need to improve, however. "Income taxes are too high," he asserts. "The tax structure needs to be fixed. We have some of the highest personal income taxes in the country. Energy costs are too high. Workers' compensation is still too high." And businesses still are burdened by a mass of regulations and employment laws, Kinley says.

Power of Small Business

Kinley attributes his drive for advocacy to his experiences. "I worked for a small businessman in college," he said. "I remember being influenced by Reagan and Kemp and the power of small business when I was in high school. This is



Long Beach area attorney Matt Kinley, a recipient of the California Chamber's Small Business Advocate of the Year Award, says his experience with small businesses drives his advocacy efforts.

economic power, the power to hire people and change lives and expand the economy.

"Especially on the business side, I understand most people are out there working hard and don't have time to be advocates for themselves. A chamber has time, and businesses appreciate the help. You're facing forces that do have the time, like unions."

Kinley sees his role with the chamber and as an advocate in general as a means of giving a voice to people who may not have the time or the resources to advocate for themselves, however pressing the issue. Running a business and making sure that business does not get smothered by regulations can be too big a job to handle alone, he says.

Given Kinley's many efforts, it is not surprising that he has earned the admiration of his colleagues. As Gordon says, "Matt . . . exemplifies the small business advocate and truly deserves to be among the notable recipients" of the Small Business Advocate of the Year Award.

Red Cross Seeks Business Support in Recruiting Disaster Relief Volunteers

From Page 1

management to leadership — that they can bring back to their workplaces.

Volunteer Criteria

Volunteers should meet the following criteria:

- Be in good health, with no mobility problems.
- Have the ability to travel immediately (within the next few days) and be

away for a three-week assignment.

- Be willing to live in hardship conditions: sleeping on a cot, with minimal access to showering facilities, drinking water and appropriate food.
- Be committed to attending an intensive Red Cross training before deployment.
- Be respectful and compassionate for disaster victims, and have an understanding of the important role Red Cross

volunteers play in the relief effort.

- Previous Red Cross experience is highly desirable.

More Information

For more information on volunteering, visit www.redcross.org or call 1-800-HELP-NOW. The Red Cross is also seeking volunteers to coordinate donations and answer phones at local chapters.

Legislators Begin Sending ‘Job Killers’ to Governor

From Page 1

establishing new types of “sue your boss” lawsuits.

The bill proposes to grant what is essentially class action status to one worker’s wage-and-hour claim without it having to meet the standards or scrutiny associated with a recognized, court-supervised class action lawsuit.

Another bill opening new avenues to sue employers, AB 581 (Klehs; D-Castro Valley), appears to be on hold for the year (see Page 6).

UI Expansion

AB 391 is on the “job killer” list

because it increases the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing UI benefits to workers unemployed due to a strike.

The state Employment Development Department has estimated that AB 391 would cost at least \$16 million, exacerbating the problems of California’s insolvent UI Trust Fund when the provisions are triggered after January 1, 2007.

California employers already are paying \$2.6 billion more in UI taxes this year than in 2004 due to enactment of benefit increases that failed to contain any cost-

saving or system streamlining reforms. The Chamber believes that adding the cost of AB 391 to a system already skirting bankruptcy would be fiscally irresponsible.

Action Needed

California needs to be looking for ways to improve its image as a place to start or grow a business and create jobs. The Chamber is urging employers to ask the Governor to **veto SB 174** and **AB 391**.

Links to sample letters are available at www.calchamber.com/jobkillers.
Staff Contact: Dominic DiMare

Senate Rejects Nominee for Air Resources Board Chair

From Page 1

California the service of a valuable public servant. With more than 20 years dedicated to developing our state’s air and water quality laws and regulations, Cindy Tuck was the right person to lead California’s efforts to improve our air quality.”

The day before the Senate vote, the Senate Rules Committee voted 2-3 along party lines against recommending Tuck for confirmation.

The Chamber and other business and

environmental groups supported Tuck’s confirmation because of her experience with air quality, water quality and hazardous materials, plus her training in environmental engineering, knowledge of the state’s regulatory process and balanced, professional approach to problem solving.

Until her appointment, Tuck had served since 2000 as general counsel and manager of the State and Bay Area Air Quality Committees at the California Council for Environmental and Economic Balance

(CCEEB), a statewide coalition of business, labor and public leaders. She had served as a consultant to the council for the three years before that.

Tuck’s experience includes more than a decade as an associate or government relations advisor with several law and lobbying firms, three years as a civil engineer for the Pacific Gas and Electric Company and two years as an environmental engineering research assistant.

She holds a J.D. from the McGeorge School of Law, University of the Pacific, and an M.S. in environmental engineering and a B.S. in civil engineering from the University of Illinois. She is a member of the State Bar of California and a registered professional engineer.
Staff Contact: Dominic DiMare



Visit www.calchamber.com for the latest
business legislative news plus products
and services to help you do business.

Chamber-Led Coalition Urges Governor, Air Board to Adopt Fuel-Neutral Policies

The California Chamber of Commerce and a broad-based coalition of industry, school transportation and other associations is urging the Governor and state Air Resources Board (ARB) to support fuel-neutral air quality standards.

"We support clean air standards but oppose regulations that arbitrarily eliminate fuels that can meet those standards," the members of the coalition, Californians for a Sound Fuel Strategy, wrote in an open letter published this week in *The Sacramento Bee*.

Concerns

The coalition voiced concern about regulations being considered by the ARB that could lead to a ban on the use of anything other than compressed natural gas in new transit buses, school buses and garbage trucks.

The regulations are scheduled to be considered at ARB's September 15 public hearing in Diamond Bar.

The ARB staff, the coalition wrote, "concedes these regulations would come

with significant costs. Yet, these regulations fail to provide a corresponding public health or air quality benefit, and could actually make air quality worse."

The coalition noted that diesel and natural gas "will soon be the same" when it comes to meeting emissions standards. "Further, the high cost of switching could force operators to keep older, more polluting vehicles on the road longer."

'Make All Options Available'

When more than one option is available to meet the state's clean air standards and goals for lower emissions, the coalition said, "California should make all options available, rather than waste public resources on mandating a single technology."

The coalition concluded: "A fuel-neutral approach, which ensures protection of the environment without hobbling the economy, remains the right policy path for California."

The Chamber is encouraging businesses to contact ARB to urge a fuel-neu-

tral approach in its air quality regulations. Comments may be addressed to the Clerk, California Air Resources Board, 1001 I Street, Sacramento, CA 95814, Fax (916) 322-3928.

More information on the meeting is available at the ARB website at www.arb.ca.gov.

Coalition

Created in 1998, Californians for a Sound Fuel Strategy (CSFS) is dedicated to ensuring that air quality policies are based on sound science, protect California's economy and taxpayers, and can be reasonably implemented in the most cost-effective manner.

CSFS advocates that state and local policies governing fuel and engine technologies be fuel neutral, allowing competing technologies — whether clean diesel, natural gas or other — to be utilized in meeting uniform emission reduction standards.

Staff Contact: Jeanne Cain

California Workplace Fatalities Continue to Decline

The number of workplace fatalities declined again in California in 2004 while employment numbers rose, according to data released by the state Division of Labor Statistics and Research (DLSR).

Last year, 416 of California's 17.55 million workers were fatally injured on the job, down from 456 of California's 16.28 million workers killed in 2003.

The number of workplace fatalities in California has declined steadily since 1995, according to the state Department of Industrial Relations. Last year marked the third consecutive year in which fatalities have been below 500.

Causes of Fatalities

Among the top causes of fatalities in 2004 were:

- Transportation incidents, such as highway accidents, which accounted for 40 percent of workplace fatalities, a 2

percent increase from the previous year.

- Assaults and violent acts accounted for 12 percent of fatalities, a 7 percent decrease from 2003.

- Accidents involving contact with objects and equipment, such as being struck by falling objects or caught in running equipment, accounted for 17 percent of fatalities, a 2 percent decrease from 2003.

- Falls from ladders and roofs accounted for 16 percent of deaths. This figure remained the same as 2003.

- Exposure to harmful substances or environments, such as electrocution, caused 8 percent of workplace deaths, the same as 2003.

- Fires and explosions caused 2 percent of fatalities, the same as 2003.

Demographics

Of the workers killed on the job last year, 94 percent were men. The larg-

est number of fatalities occurred among workers between the ages of 35 and 44 years old.

The national census of fatal workplace injuries and illnesses identifies, verifies and profiles workplaces of all employees in the private sector, as well as individuals who are self-employed, civilian and military government workers. Census sources include reports from Cal/OSHA and federal OSHA, law enforcement data, workers' compensation claims, coroners' reports and news reports.

In 2002, the standard classification system (SIC) for identifying worker occupations was used, but in 2003 the North American industry classification system (NAICS) was used, precluding an industry-by-industry comparison for those years.

The complete DLSR report is available at www.dir.ca.gov/dlsr.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchamber.com/position letters](http://www.calchamber.com/position_letters) for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Governor Signs Bill Making Sensible Workplace Changes



California Chamber of Commerce-**supported** legislation clarifying workplace payroll practices was signed into law this week by Governor Arnold Schwarzenegger.

The Chamber supports **AB 1093 (Matthews; D-Tracy)** because it makes a number of sensible changes to current payroll practices, benefiting both employers and employees.

"This bill clarifies that an employee's final paycheck can be provided via direct deposit if the worker is currently receiving their paychecks in this manner," said Julianne Broyles, Chamber director of employee relations and small business. "This common-sense change will help both employers and workers."

Allowing employees to receive a final paycheck through direct deposit has advantages for both employees and employers. For employees, wages are available for use either the morning of, or some-

times even before, a scheduled payday. For employers, direct deposit permits the use of an efficient technology to supply wages in a timely fashion to their workers.

AB 1093 corrects a problem in California's Labor Code by establishing permission for final wages to be supplied by direct deposit to the employee's account.

The Chamber supports sensible changes in state labor laws and regulations aimed at making workplace requirements easier to administer. Employers benefit from modernizing paycheck laws because the newer process provides a convenient, low-cost way to pay workers.

Staff Contact: Julianne Broyles

'Sue Your Boss' Bill Held in Senate Committee



California Chamber of Commerce-**opposed** legislation that exposed employers to new types of "sue your boss" lawsuits has been held in the Senate Appropriations Committee. It is not expected to be considered further this year.

AB 581 (Klehs; D-Castro Valley) was added to the 2005 "job killer" list because it would have made California less desirable as a place to establish or expand a business by opening new avenues to sue employers by establishing a broad new private right of action that permits joint labor-management committees to sue any employer for certain Labor Code violations that may have occurred up to four years previously, among other provisions.

Many organizations participate in joint labor-management committees that are set up for reviewing workplace health and safety issues. Some companies also include production issues that do not concern worker suspension or discharge. These management committees are not

involved in Labor Code enforcement because many employers believe such involvement is inappropriate for these committees.

Not only is such involvement in Labor Code enforcement inappropriate, but it also likely violates the National Labor Relations Act (NLRA) by creating the right of the committees to sue any employer in civil court for certain state Labor Code violations.

AB 581 also mandated that the court award the joint labor-management committee its attorney fees, costs and expenses if any violation is found and posed a significant privacy violation against individual workers by granting joint labor-management committees free access to employees' names, work addresses and home addresses.

Another bill creating new reasons to sue, SB 174 (Dunn; D-Garden Grove), has gone to the Governor (see Page 1). **Staff Contact:** Julianne Broyles

Chamber Backs Renewal of Federal Terrorism Risk Insurance Act



The California Chamber of Commerce, along with businesses and insurers across the nation, is supporting the renewal of the federal Terrorism Risk Insurance Act (TRIA).

Congress and President George W. Bush enacted the TRIA

in 2002 in response to the post-9/11 crisis in the insurance industry. Commercial insurance policies covered much of the cost associated with the attack, but subsequently insurers and reinsurers refused to write terrorism-specific policies because another assault on the scale of the destruction of the World Trade Center would be devastating.

"Congress needs to extend TRIA before the current session ends," said Charles Bacchi, Chamber legislative advocate. "Economic growth depends on the ability of businesses and individuals

to obtain property and casualty insurance at reasonable and predictable prices, thereby spreading the risk of both routine and catastrophic losses."

Market Stability

The TRIA stabilized the commercial insurance marketplace, guaranteeing coverage availability (and improved affordability) to all businesses. Financial transactions and construction and development projects had stalled due to a lack of terrorism insurance coverage. TRIA helped restore the economy by enabling these projects to move.

TRIA is set to expire at the end of this year. Working to renew the TRIA or enact a similar, workable mechanism is a nationwide coalition of businesses and organizations in the retail, transportation, real estate, sports and entertainment, manufacturing and construction sectors.

The coalition, Insure America Against Terrorism, believes the security provided by a national terrorism insurance mecha-

nism like TRIA is important to ensure the nation's workers, customers and physical plants are protected and will be able to recover from a terrorist attack.

Action Needed

Federal lawmakers need to hear that maintaining a federal terrorism risk insurance mechanism beyond December 31 is a top priority for business. Contact your representatives in Congress to let them know how important commercial insurance is to protecting individual businesses and the economy if there is another massive terrorist attack.

Congress' target date for adjournment is the end of September.

More background information is available in the Chamber's *2005 Business Issues and Legislative Guide*. For additional information and a way to contact your U.S. senators and representatives via the coalition website, visit www.terrorism-insurance.org.

Staff Contact: Charles Bacchi

Data Security Breaches Prompt Congressional Action



Spurred by reports of recent data security breaches that have compromised many Americans' personal information, lawmakers in Congress will be considering data privacy and safeguard legislation when they return from recess.

Since February, data brokers and various financial institutions have reported the loss or theft of consumer data with which they operate.

Action in Both Houses

In late July, the U.S. Senate Commerce Committee took amendments on S. 1408 by committee Chairman Ted Stevens (R-AK), which creates a national data privacy law requiring businesses and other organizations to notify consumers of data breaches that compromise their personal information.

The committee accepted amendments from Senator Bill Nelson (D-FL), barring the sale and display of Social Security

numbers except in special circumstances, and from Senator Barbara Boxer (D-CA), cutting from 90 days to 45 days the maximum amount of time a company has to notify individuals of a breach.

The U.S. Senate Judiciary Committee also is planning to take up a trio of personal data security bills, including one by Senate Judiciary Chairman Arlen Specter (R-PA). The lengthiest and most encompassing of all such bills, S. 1332, requires timely notification of security breaches, gives the federal government more regulatory power, sets data security minimum standards, and limits the extent to which states can legislate on personal data safety.

The bill is also the only one to set criminal penalties for those who intentionally withhold information related to a security breach and for the hackers and thieves that illegally access confidential personal information.

At the same time, the U.S. House of Representatives Energy and Commerce Subcommittee heard and considered its own version of federal data protection legislation.

California Law

California passed one of the first personal data breach notification laws in 2003, which later became the model for some 17 other states that passed similar data security legislation.

The majority of data security bills introduced so far in the U.S. House and U.S. Senate, however, pre-empt any state or local law now in place on the issue.

Chamber Position

The California Chamber of Commerce supports the establishment of a uniform national standard for data security laws.

The Chamber also believes it is important for federal legislation to address the hackers and identity thieves who commit such crimes — not just the data brokers involved in security breaches. Increasing penalties on those who intentionally commit such crimes while establishing national data security standards would best help maintain the security of Americans' personal data.

Staff Contact: Valerie Nera

Deadline Approaching Quickly to Complete Sexual Harassment Training

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

Meet the mandatory requirements the easy way:



CALIFORNIA
CHAMBER of
COMMERCESM



- Significant savings over in-person training
- No need to spend time planning an in-person presentation
- Supervisors can train at their own pace
- Questions go directly to the course instructor, a legal expert
- Record-keeping tools track who has taken the course and automatically e-mail reminders to those who haven't completed it

To order, visit www.calchamberstore.com or call (800) 649-4921.

ADDRESS SERVICE REQUESTED

Helping California Business Do Business™

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com



CALIFORNIA CHAMBER OF COMMERCE

ALERT

Periodicals
Postage
Paid
Sacramento, CA