

# CALIFORNIA CHAMBER OF COMMERCE VOLUME 32, NUMBER 11 • MARCH 31, 2006

# Chamber Seeks Flexibility for Individual Workers

Write Legislators to Support 4-Day Workweek Bills

The California Chamber of Commerce is working to build support for legislation that will help individual employees achieve greater flexibility in work schedules.

The Chamber-sponsored bills, AB 2217 (Villines; R-Clovis) and SB 1254 (Ackerman; R-Tustin), will allow individual workers to request and their employers to mutually agree to a four-day compressed workweek.

AB 2217 is scheduled to be heard on April 19 by the Assembly Labor and Employment Committee. SB 1254 is set to be heard on April 26 in the Senate Labor and Industrial Relations Committee.

"Flexibility in daily overtime rules benefits both employers and employees,"



Senator Dick Ackerman



Assemblyman Mike Villines

said Julianne Broyles, Chamber director of employee relations and small business. "And workplace flexibility isn't just about See California: Page 4

# Chamber Presses for Plain Language in Workplace Posters



The California Chamber of Commerce is **sponsoring** legislation aimed at making workplace posters easier to understand.

Chamber-sup-

ported AB 2277 (Villines; R-Clovis) will establish a working group of employee and employer representatives to work together to rewrite current state-mandated workplace posters using plain, simple language

The bill is scheduled to be heard April 19 by the Assembly Labor and Employment Committee.

#### **Benefits**

"Both employees and employers would benefit from easy-to-understand workplace posters," said Julianne Broyles, Chamber director of employee relations and small business.

"Plain and simple language in workplace postings ensures that employers know how to comply with the law and clearly informs workers of their rights," Broyles commented. "Poorly written rules can make employers and employees feel insecure, frustrated and angry, and can end up causing conflicts when none were intended."

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# April 25 Legislative Summit

# Breakout Focus: Health Care Cost Control

Health care costs will be the focus of discussion during a breakout session at the California Chamber's Business Legislative Summit, set for April 25 in Sacramento.

Marti Fisher, Chamber legislative advocate, will serve as moderator of the session on "Runaway Health Care Costs: Is There Anything We Can Do to Put on the Brakes?"

Breakout panelists will include representatives of health plans, hospitals, doctors and pharmaceutical companies. Panelists will present their perspectives on what's driving health care costs upward, then join session attendees in a

discussion exploring how employers and all interested parties can work together to control expenses.

The breakout session will be sponsored by the Dana Point Chamber of Commerce.

# **Meeting with Peers**

The Summit provides business and local chamber leaders a forum to meet with peers and state policy experts and to focus on priority legislative issues facing California business.

The event's dual aims are to empower attendees to be active players in the

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# Inside

Chamber Opposes New Health Care Mandate: Page 3



# Labor Law Corner

# Family Leave Laws Apply to Eligible Temporary Employees



Jessica Hawthorne Assistant Employment Law Counsel

If my company hires a temporary employee as a full-time employee, is that employee eligible for federal Family Medical Leave Act (FMLA) leave in the same manner as other company employees?

All eligible employees of an employer covered by the FMLA or California Fam-

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E-mail: alert@calchamber.com. Home page: www.calchamber.com. ily Rights Act (CFRA) are eligible in the same manner for leaves under the FMLA and the CFRA, regardless of whether they were hired as a temporary or regular employee.

# **Family Leave Laws**

The FMLA and CFRA, collectively called "family leave laws," apply to all private employers with 50 or more employees.

The FMLA and CFRA require covered employers to provide eligible employees with leave for up to 12 weeks per year to care for themselves and family members with serious medical conditions, for personal medical issues, or to bond with a newborn or adopted child.

Under most circumstances, FMLA and CFRA leave run concurrently.

An employee is eligible for family leave if she/he has worked at least 1,250 hours in the prior year for that employer and has been employed by the covered employer for at least 12 months.

The employee also must work at a worksite with 50 or more employees, either on the same premises or within 75 road-miles of the worksite.

# **Temp Employees Eligible**

If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick,

# Chamber Calendar

Luncheon Forum:

April 6, Sacramento

Volunteer Leaders Conference:

April 24, Sacramento

Fundraising Committee:

April 24, Sacramento

Transportation Committee:

April 24, Sacramento

Taxation Committee:

April 24, Sacramento

Water Resources Committee:

April 24, Sacramento

Board of Directors:

April 24, Sacramento

California Business Legislative Summit: April 25, Sacramento vacation) during which other benefits or compensation are provided by the employer (for example, workers' compensation, group health plan benefits, etc.), the week counts as a week of employment.

Further, the required 12 months of employment need not be 12 consecutive months. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months," 52 total weeks is deemed to be equal to 12 months.

# **Family Leave Tips**

- Keep accurate payroll records of all hours worked by temporary and regular employees in order to establish eligibility for FMLA and CFRA.
- Ensure your FMLA and CFRA policies are clear, concise and up to date.
- Understand the difference between employees and independent contractors because only employees are eligible for FMLA/CFRA leave. For more information, review the basics on hiring independent contractors at www.hrcalifornia.com.

The Labor Law Helpline is a service to California Chamber preferred and executive members. For expert explanations of employment laws and FMLA/CFRA, not legal counsel for specific situations, call (800) 348-2262 or e-mail: helpline@calchamber.com.

# Seminars/Trade Shows

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

#### **Business Resources**

Sustainable Enterprise Conference (SEC 2006). Sonoma State University Business Department. April 7, Rohnert Park. (707) 664-2228.

Working Within the Public Sector. Wilcox Miller & Nelson. April 11, Sacramento. (916) 977-3700.

#### Labor Law

Managing Leaves of Absence Web Seminar. California Chamber of Commerce. April 27. (800) 331-8877.

#### International Trade

Doing Business with Israel: A Trade Briefing. Israel Economic Mission. Sacramento, May 4. (323) 658-7924.





# Chamber Opposes New Health Care Mandate

Labor-Backed Proposal Aims to Increase Non-Union Employer Costs



The California Chamber of Commerce is **opposing** state legislation that places a new health care mandate on large employers as part of

a nationwide effort by organized labor to increase costs of non-union employers.

Testimony for the bill, **SB 1414** (**Migden; D-San Francisco**), was heard this week in the Senate Health Committee. The committee is expected to vote on the bill next week.

SB 1414 requires companies with more than 10,000 employees in California to spend the equivalent of 8 percent of their total payroll on health care or pay the equivalent amount to Medi-Cal.

# **Bill Will Drive Up Costs**

"SB 1414 is not about increasing access to health care; it's about driving up costs at non-unionized businesses," said Jeanne Cain, Chamber senior vice president. "This bill fails to address factors behind the rising health care costs that are the main reason some employers and employees cannot afford to buy coverage.

"Ultimately, SB 1414 will discourage employers from expanding in California, which will hurt the business climate and jobs."



California Chamber Senior Vice President Jeanne Cain emphasizes at a March 28 press briefing that a health care mandate bill, SB 1414 (Migden; D-San Francisco), won't help increase access to health care but will harm the state's economy.

A study recently released by the Employment Policies Institute showed that, if passed nationwide, mandates for employer-paid health care would trigger job losses for 315,000 Americans.

For now, the mandate targets large employers that for the most part already provide health insurance to their employees.

#### **Mandates in Other States**

SB 1414 is similar to a law recently adopted in Maryland, where legislators overrode the governor's veto. Follow-up legislation already has been introduced in Maryland to expand the health care mandate to all employers with fewer than 10,000 employees.

Health care mandate bills with lower employee thresholds have been introduced in New Hampshire, Rhode Island and Washington.

#### **Action Needed**

This week's hearing was for testimony only. The vote has been postponed until next week, adding critical time for grassroots efforts to stop the bill's movement.

The Chamber is urging employers to ask their senators and members of Senate Health to **oppose** SB 1414. For sample letters, visit the Government Relations section at www.calchamber.com.

Staff Contact: Marti Fisher

# April 25 Summit Breakout Focus: Health Care Cost Control

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legislative process and to present the business perspective on policy issues affecting California business' bottom line.

Close to 1,000 businesspeople from throughout the state are expected at the day-long event.

## Governor to Speak

Governor Arnold Schwarzenegger and California Chamber Chair Donna F. Tuttle will open this year's Summit at the Sacramento Host Breakfast. This year marks the 80th such event sponsored by the Sacramento Host Committee.

# **Other Breakout Sessions**

Following the Host Breakfast, Summit attendees can choose from a number of breakout sessions focusing on timely business issues, in addition to the health care cost session.

General sessions will include a recap of priority issues by Chamber President Allan Zaremberg and a town hall session with key state leaders.

State legislators are invited to join their constituents at the Summit luncheon, which also features presentations acknowledging outstanding advocacy by small business owners and local chambers of commerce; the HR Partner of the Year; and local chambers that have supported the California Chamber's candidate political action committee, ChamberPAC.

#### **April 11 Registration Deadline**

The deadline to register is April 11. For more information on the Summit or to register, visit *www.calchamber.com/events*. Staff Contact: Amy Orr



# California Chamber Seeks Flexibility for Individual Workers



From Page 1 working families or women; it's about everyone. Survey after survey shows that employees want flexible schedules as a way to handle complex and

hectic lives."

# **Mutual Flexibility**

Both AB 2217 and SB 1254 would allow employees to work four 10-hour days a week if the employee desires the schedule and the employer agrees to the compressed schedule.

If the employer agrees to the proposed four-day workweek schedule, the four-day workweek will be paid at straight-time rates. Any work performed beyond the compressed work schedule would remain subject to current state overtime rules.

Working a compressed four-day workweek provides for up to 50 extra days off from work each year for the average full-time employee. That will be time for the employee to spend with family, attend children's school activities, take care of dependent elders, go to medical appointments, go back to school or attend to other private matters that usually cannot be accomplished on a weekend.

#### **Current Law Inflexible**

Under current law, individual employees do not have the right to seek and arrange flexible schedules with their employers.

California overtime law requires premium pay for an hourly employee who works more than eight hours in a single day or more than 40 hours in a single workweek. Due to the state's strict overtime premium pay requirements, an employer who agrees to permit a four-day compressed workweek schedule would incur additional costs because the employee must be paid at time-and-a-half wage rates for the last two hours of each 10-hour workday.

The current alternate work schedule adoption process is largely unused and does not provide flexibility for individual workers and employers. About 11,000 of the state's 800,000-plus employers are trying to operate under the restrictive alternate workweek rules.

The current (and very detailed) Industrial Welfare Commission wage orders permit employers to institute alternative work schedules only if a supermajority of affected employees agree to the arrangement in writing and by secret ballot.

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

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@calchamber.com

jessica.smith

the employer to potential lawsuits that can seek up to three years of back overtime pay for affected workers, along with

along with huge penalties and fines.

Moreover, variances in schedules or the use of more than one schedule is prohibited without repeating the voting process. This effectively eliminates most employers and employees from choosing schedule options such as flextime, parttime, job sharing, telecommuting and compressed workweeks.

Employers who are offering a compressed work schedule without going through the election process are operating in violation of the law.

# **Employee Protections**

Both AB 2217 and SB 1254 contain important protections for employees. The bills prohibit any employer from offering

an employment benefit to an employee as an incentive to seek flexible schedules, or retaliating against an employee who does not seek a flexible schedule.

The bills do not affect workers covered by collective bargaining agreements. Employees covered by collective bargaining agreements in both the private and public sector are exempt from daily overtime. Included in this category are all state, county and city employees, such as employees of school districts, water districts and a multitude of other governmental agencies.

# Write Legislators, Testify

The Chamber is encouraging employers and employees to contact the chairs and vice chairs of the Assembly and Senate policy committees to voice **support for AB 2217 and SB 1254** to allow greater flexibility in employee work schedules.

Greater flexibility would contribute to a reduction in traffic congestion at peak traffic hours and less air pollution, as well as improved employee morale and lower employee absentee rates.

Assembly Labor and Employment is chaired by Assemblyman Paul Koretz (D-West Hollywood); the vice chair is Assemblyman Alan Nakanishi (R-Lodi).

The chair of Senate Labor and Industrial Relations is Senator Richard Alarcón (D-San Fernando Valley). Also send letters to Senator Dick Ackerman (R-Tustin), the only Republican on the committee.

Address letters to legislators at the State Capitol, Sacramento, CA 95814 or visit the Government Relations section at www. calchamber.com for access to an easy-to-use sample letter. Please send copies of your letters to the Chamber.

Employers or employees who are interested in testifying in support of these bills, please contact Jessica Smith, Chamber grassroots coordinator, at (916) 444-6670 or e-mail jessica. smith@calchamber.com.

**Staff Contact: Julianne Broyles** 

**California Business Legislative Summit** 

April 25, Sacramento







Special thanks to our Major Sponsor **Wells Fargo Bank** 

Registration information at www.calchamber.com



# Senate, Assembly Committees Approve Minimum Wage Hike with Indexing



California Chamberopposed legislation giving California the highest minimum wage rate in the nation passed Senate and Assembly policy committees this week

on party-line votes.

Both SB 1162 (Cedillo; D-Los Angeles) and AB 1835 (Lieber; D-Mountain View) increase the cost of doing business by raising the state minimum wage and indexing the wage rate upward every year thereafter.

SB 1162 is an urgency measure that increases the minimum wage to \$7.25 60 days after the bill is signed into law and to \$7.75 on July 1, 2007, and then indexes the increase annually thereafter.

AB 1835 raises the minimum wage to \$7.25 in 2007 and to \$7.75 in 2008, and then indexes the increase annually thereafter

The bills will increase both public and private employer wage costs by at least \$2.08 billion annually, raising costs to consumers and driving employers who cannot absorb the increases to other states

SB 1162 passed the Senate Labor and Industrial Relations Committee on March 29 by a vote of 3-1.

AB 1835 passed the Assembly Labor and Employment Committee on March 29 by a vote of 6-2.

# **Better Alternative**

In opposing SB 1162 and AB 1835, the Chamber is pointing out that to improve California's economy, lawmakers should focus on removing barriers to productivity and wage growth that government has imposed on the private sector. Specifically, California should:

- Allow individual employees to request and obtain flexible schedules.
- Reduce costs associated with providing employee benefits.
- Uncouple the link between minimum wage rates and exempt worker status.
- Increase opportunities for small business formation.



Julianne Broyles, California Chamber director of employee relations and small business, highlights for the Assembly Labor and Employment Committee the multiple impacts of a minimum wage hike with automatic increases, including additional costs in other employer expenses that legislation has linked to the minimum wage.

- Increase the skills of both the current and future workforce.
- Reduce the regulatory red tape burlen.

#### Repercussions

The Chamber asked legislators to consider the following impacts of SB 1162 and AB 1835:

- The mandated 50-cent per hour rise in the minimum wage would increase base payroll costs for a small business with 20 workers by at least \$20,800 per year.
- By putting the minimum wage increases on autopilot, the bills will ensure that payroll costs will continue to substantially rise each and every year. Tying increases in the state minimum wages to inflation and ignoring other factors such as the strength of the state's economy will inevitably result in increases in the minimum wage at times when the economy is ill-suited to absorb higher employer costs.
- Along with the direct wage cost increase, other employment-related costs will also rise if the bills become law. Employer payments for employee benefits, premiums, pensions and taxes all rise following wage increases, because all of these costs are directly linked to the size of payroll. If SB 1162 or AB 1835 is enacted, workers' compensation costs for employers of minimum wage workers will rise by at least \$120 million annually, according to estimates by the Workers' Compensation Insurance Rating Bureau.

• The bills also affect managerial and other exempt worker salaries due to the enactment of AB 60 (Chapter 134, Statutes of 1999). That statute recast California overtime law and permanently linked to the state minimum wage the threshold for classifying salaried executive, administrative and professional employees as exempt. To be exempt from state overtime requirements, executive, administrative and professional employees must earn at least two times the state minimum wage for full-time employment, as well as meet a detailed duties test.

In practical terms, any salaried employee who makes less than \$28,080 per year today must be classified as a non-exempt salaried employee. The provisions of SB 1162 and AB 1835 will increase the exempt worker annual base salary requirement by \$4,160 — to no less than \$32,240 per year — a substantial wage cost increase with impacts for both public and private employers.

## **Action Needed**

SB 1162 will be considered next by the Senate Appropriations Committee. AB 1835 will be considered next by the Assembly Appropriations Committee. Contact your Senate and Assembly representatives and urge them to **oppose SB 1162** and **AB 1835.** 

**Staff Contact: Julianne Broyles** 



# Legislative Outlook

An update on the status of key legislation affecting businesses. Visit 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.

# Chamber Supports Legislation to Combat Identity Theft



The California Chamber of Commerce is **supporting** legislation to help the state combat identity theft.

- SB 1387 (Poochigian; R-Fresno) increases the penalties for stealing and trafficking in identity theft information.
- SB 1389 (Poochigian; R-Fresno) remedies an oversight in current law by clarifying when a person can be charged with criminal identity theft.

Identity theft is the number one consumer complaint reported to the Federal Trade Commission, which recorded 43,839 identity theft complaints from California in 2005. The average victim spends about 175 hours over a two-year period clearing off an average of \$17,000 of fraudulent expenditures from credit reports. Some victims spend years trying to clear their names and re-establish their credit histories.

Employers see the impact of identity theft in missed hours of work and increased administrative paperwork. The crime also can significantly slow the employment process, especially background checks.

SB 1387 will help deter identity thieves by increasing the penalty based on the number of victims. Under this legislation, the penalty for stealing personal information will range from one year in county jail up to as long as seven years in state prison plus a fine of \$1,000 per person. In addition, SB 1387 creates a two-year enhancement for repeat offenders and a year enhancement for preying on seniors, minors or deployed military personnel.

SB 1389 corrects an oversight in current law, which prohibits charging a person with criminal identity theft when that person uses a stolen identity and commits a crime that results in the victim of the identity theft being prosecuted.

#### Action Needed

Both SB 1387 and SB 1389 are scheduled to be heard by the Senate Public Safety Committee on April 18.

Urge your senator and members of the committee to **support SB 1387 and SB 1389.** 

Staff Contact: Valerie Nera

# Bill Limiting State's Energy-Production Choices to Be Heard in Senate



California Chamber of Commerce-**opposed** legislation that would compromise the state's economy and energy supply by establishing an unreachable greenhouse gas performance standard will be heard April 4 by the Senate Energy, Utilities and Communications Committee.

SB 1368 (Perata; D-Oakland) would establish a greenhouse gas emission performance standard, limiting the available power sources to meet California's energy demands while substantially increasing the price of electricity to consumers and businesses.

Rather than encouraging coal-fired power plants to use and develop cleaner technologies for burning coal, the bill sets greenhouse gas emissions standards that even efficiently burning coal plants will not be able to meet.

SB 1368 also limits utility purchases

to short-term contracts, making financing upgrades of coal plants with clean technology virtually impossible.

Further, roughly 40 to 45 percent of the state's electricity generation in 2004 came from facilities that would be unable to meet the greenhouse gas performance standard required by SB 1368. Without these plants, it would be impossible for California to meet its current and future energy demands.

#### **Action Needed**

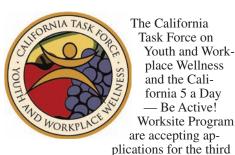
Limiting power sources will lead to higher costs and electricity prices for businesses and consumers, making California less attractive to business and having an adverse effect on the state's economy.

Write members of Senate Energy, Utilities and Communications to express **opposition** to SB 1368.

Staff Contact: Dominic DiMare



# Workplace Wellness Programs Seeking Fit Business Award Applications



annual California Fit Business Awards.

This award recognizes employers for excellence in providing healthy eating and physical activity programs at their workplaces and supporting and encouraging employees in making healthy choices.

# **Healthy Workers, Fit Economy**

According to the California Department of Health Services, physical inactivity, overweight and obesity cost employers \$21.7 billion in lost productivity, workers' compensation, and direct and indirect medical costs in 2000 with an estimated increase to \$28 billion by 2005.

These hefty costs have spurred forward-thinking business owners to realize the benefits of providing healthy eating and physical activity opportunities for their employees.

Encouraging healthy habits at the workplace provides a host of benefits, including:

- reduced absenteeism and lost productivity;
  - enhanced recruitment and retention;
- cost savings on insurance and workers' compensation premiums.

Many employers are realizing how easy implementing a healthy workplace strategy can be. The Fit Business Award offers a chance to be recognized for their often-innovative efforts.

#### Skinny on Fit Award

Employers demonstrating excellence in nutrition education, physical activity promotion and worksite wellness can apply for the Fit Business Award at the state Department of Health Services website at www.dhs.ca.gov. The application deadline is May 17.

Winners are selected from applicants in five categories (based on number of employees) for their commitment to policies, programs and worksite environments that support employees in making healthy eating and physical activity

choices throughout the workday.

Such changes may include:

- providing vending machine food choices that meet healthy nutritional standards;
- replacing doughnuts, coffee and sodas at meetings with 100 percent fruit or vegetable juice, fruits, vegetables and whole grain bagels;
- allowing extended lunch hours for employees to engage in physical activities.

The award application asks for details on ways businesses encourage employees to "eat better" and "move more," as well as how employers "promote healthy lifestyles" and "create a culture" of health and fitness.

### **Chamber Member a Fit Business**

Chamber member USAA received a Fit Business Award last year in recognition of its proven commitment to employee health. This *Fortune* 200 company — the nation's premier provider of diversified financial services for military members and their families — has a number of programs to encourage a fit and healthy workplace.

USAA provides a Weight Watchers at Work program, massage therapy, ergonomics consultants, nursing mothers rooms. **EAT FRUITS & VEGETABLES** annual on-site health screening, on-site clinic staffed by nurses, discounted pedometers and a

health education website with information

and tools to help employees develop a healthy lifestyle.

The company also offers its employees rebates on membership fees for the on-site fitness center, as well as offsite fitness facilities. Employees who participate in the company-sponsored walking program receive prizes.

Balanced and healthy food choices are available to employees at the on-site cafeteria, in vending machines and at catered events. Cafeteria food items are accompanied by nutritional information to encourage healthy choices. Fruits and vegetables also are offered at a discounted price.

# **Healthy Workplace Tools**

For more information about the 2006 Fit Business Award application, contact Leah Cox, task force director, at wellnesstaskforce@yahoo.com or by calling (916) 760-7448.

Employers interested in creating a healthy workplace, increasing employee wellness and productivity, and improving their bottom line can use the tools

provided in the California 5 a Day—Be Active! Worksite Program's Fit Business Kit, available at www.ca5aday.com/

> worksite. Information also is available on the California Task Force for Youth and Workplace

Wellness website at www.

wellnesstaskforce.org.

# Chamber Presses for Plain Language in Posters

AND BE ACTIVE

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# Working Group

AB 2277 proposes to assemble a working group composed of equal numbers of employer and employee representatives, overseen by the Division of Labor Standards Enforcement. Using existing resources, the group members will work together to make recommendations on how best to simplify the language of current state-mandated workplace posters.

"Essentially a plain language poster looks good, is organized logically, and is understandable the first time someone reads it," Broyles said.

If plain and simple language is used to write the posters, then new rules will be written using common, everyday words, using short sentences, using terms and definitions that are simply and clearly defined.

#### Action Needed

The Chamber is encouraging employers to urge members of Assembly Labor and Employment to support AB 2277. Visit the Government Relations section at www. calchamber.com for an easy-to-use sample

**Staff Contact: Julianne Broyles** 

Employee Handbook

Software





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