

ALERT

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Report: Container Tax Bill Takes Wrong Approach



A container tax to fund infrastructure — such as that proposed in a California Chamber of Commerce-**opposed** “job killer” bill — is the wrong approach and would result in a long, drawn-out legal battle, according to a newly released report.

The report is the result of 2004 legislation by then-Assemblyman Alan Lowenthal (D-Long Beach) to evaluate all aspects of California’s marine transportation system, including growth

forecasts, economic and environmental impacts of port operations, productivity, infrastructure needs, education, port security and funding.

The report, “Growth of California Ports: Opportunities and Challenges,” was submitted by the California Marine and Intermodal Transportation System Advisory Council (CALMITSAC).

The “job killer” bill, **SB 974 (Lowenthal; D-Long Beach)**, increases the cost of shipping goods and makes California less competitive by imposing an illegal per-container tax in the ports of Long

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Independent Contractor Bill Moves in Assembly



California Chamber of Commerce-**opposed** legislation establishing civil penalties and actions against employers that willfully misclassify employees as independent contractors passed an Assembly committee this week on a party-line vote.

New Excuse to Sue

SB 622 (Padilla; D-Pacoima) creates a new excuse to sue employers and exposes them to excessive new penalties for “willful misclassification” of independent contractors without providing clear compliance guidelines.

Assembly Labor and Employment approved the bill on a vote of 5-2 on June 20. It will be considered next by the Assembly Judiciary Committee.

SB 622 proposes excessive additional employer penalties for violations and permits not only an allegedly misclassified individual, but also labor unions and other organizations, to bring an action on behalf of all allegedly misclassified individuals.

Definition Needed

The CalChamber is emphasizing that instead of additional penalties, employ-

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Novak Handicaps ‘08 Nominees



Robert Novak, nationally syndicated columnist and television personality, speculates on likely line-ups for the 2008 presidential race and other pending political possibilities at the June 21 conference of the CalChamber Advocacy Council.

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Labor Law Corner

Issues to Consider Before Terminating Incarcerated Employee



Sunny Lee
Senior Labor Law
Consultant

Can I terminate someone for being incarcerated?

There is no law that protects a person's job when they are incarcerated; however, you cannot terminate an employee for being arrested or charged with a crime.

In criminal law, there is a presumption

of innocence until proven guilty. Therefore, unless an individual pleads guilty, the individual has a right to a jury trial. This process is not necessarily quick.

After someone is charged and arrested, they are taken to jail, booked and detained pending release on bail. Those individuals who cannot post bail remain in jail until their case is set for a court hearing.

Make the Call

The aspect of an arrest and incarceration that often leads to termination is the simple fact that the employee is not available for work.

Whenever an employee does not show up for work as scheduled, an employer is obviously concerned about the employee's well-being and how the work is going to get done. When an employee does not show up to work or call, an employer may think that the employee is not interested in retaining employment.

Often, if an employee is not able to call, the employee will have a family member or friend call. Even though an employee may not be at liberty to get out of jail, if the employer knows what is going on, the employer may be more inclined to work with the situation by giving the employee time off work.

Job Abandonment

An employer faced with the question of how long to hold someone's job, if at all, can base the decision on company policy or practice and also the commitment that has been made to the employee.

Some employers have a policy regarding job abandonment, which comes into play whenever an employee does not show up to work or does not call in for three or more days.

If an employer has not heard from an employee or some family member within

a reasonable period of time, it is likely that the employer will consider that the employee has abandoned the job.

Final Paycheck

Under Labor Code Section 202, if an employee quits without notice, the employer has 72 hours to pay the employee. The employer should prepare the final paycheck and have it ready for pick-up. The burden is on the employee to come in and pick up the final paycheck or notify the employer of where the employee wants the check mailed.

Unemployment Claims

The last consideration in terminating an employee for being incarcerated is what the Employment Development Department (EDD) will do with an unemployment claim.

If an employee is not able to report because the employee is in jail, EDD will not consider that in itself to be work misconduct.

For more information about EDD's views on incarceration, visit its website and view the second item at www.edd.cahwnet.gov/uibdg/umc15.htm#mc15a.

The Labor Law Helpline is a service to California Chamber of Commerce 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 submit your question at www.hrcalifornia.com.

Seminars/Trade Shows

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

Business Resources

Free Small Business Fair. California State Board of Equalization. Garden Grove, June 26. (213) 593-1311.

Free Nonprofit Tax Seminar. California State Board of Equalization. Pasadena, June 28. (213) 593-1311.

2007 Annual Conference. Santa Barbara Human Resources Association. Santa Barbara, September 12.

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CalChamber Calendar

*International Dinner Forum with
European Union Ambassador John
Bruton: June 26, Sacramento.*



CalChamber-Opposed Bill Seeks to Ban Thousands of Packaging Materials



A “job killer” bill making its way through the Legislature seeks to prohibit the manufacture, sale and use of a wide range of packaging materials commonly used in commerce and by millions of

Californians everywhere, everyday.

California Chamber of Commerce-opposed **SB 899 (Simitian; D-Palo Alto)** pushes jobs out of California and increases costs for industries that use plastic packaging by banning the manufacturing and distribution of specified plastic packaging in California.

Prohibiting the use of certain chemicals in packaging will have an impact

on a broad array of consumer goods and packaging, including pharmaceutical products, electronics, hardware, grocery items, cleaners and detergents, clamshell containers, bowls and cups.

Lacks Scientific Base

SB 899 incorrectly suggests the mere presence of certain chemicals makes them toxic. In many cases, the chemicals listed may be present only in trace quantities due to processes of manufacture but not be integral to the structure of the packaging. SB 899 is unnecessary, as California already has authority to regulate in this area.

Ironically, although SB 899 bans the use of vinyl chloride in packaging, this same material is used to manufacture PVC plastic pipe, a key building product used in

residential and commercial construction.

The California Building Standards Commission recently approved the unrestricted use of CPVC for drinking water applications. Also, PVC pipe is a preferred material for use in aquarium applications, helping keep water clean and marine life healthy. In fact, the National Aquarium in Baltimore, Maryland, recently noted that PVC and sea water rate “excellent” on chemical compatibility charts.

Action Needed

SB 899 is awaiting a hearing by the Assembly Environmental Safety and Toxic Materials Committee. Contact committee members and urge them to **oppose SB 899**.

Staff Contact: Jason Schmelzer

CalChamber Stresses Power of Market to Curb Greenhouse Gases



The California Chamber of Commerce is urging the state Air Resources Board (ARB) to permit the innovation and efficiency of market forces to attack the challenge of

meeting California’s aggressive goals to reduce greenhouse gas emissions.

Markets are the most cost-effective way to reduce greenhouse gas emissions throughout the world, delivering the most carbon reductions per dollar spent, the CalChamber points out in its review of the ARB’s April 20 “Proposed Early Actions to Mitigate Climate Change in California.”

The Global Warming Solutions Act of 2006, AB 32 (Núñez; D-Los Angeles), placed responsibility for regulating California’s greenhouse gas emissions with the ARB.

One of ARB’s mandates is to implement “discrete early actions” — specific regulations that can have immediate effect on reducing emissions — on particular industries. These discrete early actions will affect the majority of CalChamber

members, both directly and indirectly.

Low Carbon Fuel Standard

Transportation represents a large portion of greenhouse gas emissions in the state. Earlier this year, Governor Arnold Schwarzenegger issued an executive order calling on multiple state agencies to combine their efforts to create a Low Carbon Fuel Standard that would be met through market-based methods.

The CalChamber believes this original vision should be sustained to ensure the state develops a multitude of fuel technologies that will help reduce emissions and create a fuels market that is cleaner and more affordable for consumers and businesses statewide.

Renewable fuel technology is still being researched and continues to develop each day. The ARB should refrain from picking winners and losers among these technologies so the state can recognize the benefits of each technology.

Other Important Considerations

The CalChamber also recommended that the ARB:

- recognize voluntary early emission

reductions to give credit to true leaders in the business community that are setting an example for those industries that have yet to begin reducing greenhouse gas emissions.

- immediately begin an economic analysis of all proposed early action measures to ensure a credible system for the future.
- not confuse the priority of reducing greenhouse gas emissions with other environmental efforts the state is pursuing, such as criteria pollutants and air toxics.
- be sure its regulations don’t result in backsliding — increasing local criteria and air pollutants — in the process of reducing greenhouse gas emissions.

Global Issue, Global Model

The CalChamber also reminded the ARB that reducing greenhouse gas emissions is a global issue, and California is being watched by a number of states and nations as it embarks on this regulatory program.

The state should promote best practices and programs on a global scale to remain a leader in the fight against global warming.

Staff Contact: Amisha Patel

President Bush to Sign CalChamber-Backed U.S.-Korea Free Trade Agreement



After a year-and-a-half of negotiations, U.S. President George W. Bush will sign the California Chamber of Commerce-supported U.S.-Korea Free Trade Agreement (FTA) on June 30.

On February 2, 2006, the United States and Korea

announced that they were beginning negotiations toward a bilateral FTA, with talks expected to take up to a year. The first round of negotiations on the U.S.-Korea FTA took place in June 2006, with further rounds in July, October and December. The talks encountered some difficulty while reviewing restrictions on the Korean film industry, as well as tariffs on textiles, automobiles and agricultural products.

Trade Commission

The final hurdle for the FTA is an assessment of the agreement's impact, which took place this week before the U.S. International Trade Commission (ITC).

The Trade Act of 2002 requires the ITC to prepare a report that assesses the likely impact of a proposed FTA on the U.S. economy as a whole and on specific industry sectors and the interest of U.S. consumers.

In preparing the report, the ITC will review economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement. The ITC will provide a description of the analyses used and conclusions drawn in such literature and a discussion of areas of consensus and divergence between the ITC's analyses and conclusions and other economic assessments reviewed.

Benefits of Agreement

Last week the U.S. House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation and Trade met to review the benefits of the U.S.-Korea FTA.

Deputy U.S. Trade Representative Karan Bhatia testified before the committee highlighting the economic and trade benefits of a U.S.-Korea FTA.

"From an economic perspective, the U.S.-Korea FTA offers the U.S. an opportunity to grow our already significant bilateral trade and investment relationship with one of the world's most diversified and vibrant economies," said Bhatia. "With its fast-growing, dynamic economy and industries and its creative people, South Korea is precisely the kind of business partner America needs."

Bhatia explained that the FTA would grant unprecedented access to the South Korean market. Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products becomes duty-free within three years of the FTA's entry into

force, including key U.S. exports such as electronic machinery and parts, auto parts, power generation equipment, most chemicals, and medical and scientific equipment.

U.S. farmers and ranchers will benefit from the fact that more than half of current U.S. farm exports to South Korea will become duty-free immediately, including high-value agricultural products such as almonds, pistachios, wine and cherries. For many other key agricultural goods, such as pork and citrus products, the FTA will provide unparalleled access to the South Korean market and its prosperous consumer base.

For U.S. investors operating in South Korea, the FTA establishes a stable legal framework that will protect all forms of investment. Under nearly all circumstances, U.S. investors will enjoy the right to establish, acquire and operate investments in South Korea on equal footing with local investors, and investor protections will be backed by a transparent, binding international arbitration mechanism, Bhatia said.

Anticipated Action

Resolution of the FTA comes just a week before President Bush's power under trade promotion authority to sign trade deals without their being subject to congressional amendment is due to expire. Negotiations are underway to extend the trade promotion authority process. Both countries' legislative bodies still must approve the FTA.

Staff Contact: Susanne Stirling

Fair to Showcase California Technology in China

California companies will have an opportunity to showcase innovative products in China at the California Technology Fair, set for October 10-13 in Shanghai.

Golden California, Inc. has partnered with Hannover Fairs USA to produce the event, featured as a "show within a show" and designed to specifically brand and showcase cutting-edge technologies developed across industry sectors in California.

The fair will provide exposure to more

than 40,000 government and private sector buyers and professional manufacturers. Matchmaking meetings can be arranged to suit each individual company's needs.

Industry and government leaders from both California and China will present seminars on the latest regulatory, intellectual property rights and policy developments that have a direct effect on California technology companies operating in or entering the China market.

For example, the California Trade Issues Forum will include sessions on topics such as: intellectual property protection in Asia; overcoming barriers to trade with Asia; mistakes to avoid in doing business in Asia; "market patience" — what does it mean; security devices and services to protect intellectual property; how to get started in the Asian markets.

For a comprehensive breakdown of the exhibitor package levels, visit www.hf-usa.com/cebitasia_california.

Final Push to Renew President's Authority to Negotiate World Trade Agreements



The United States made a significant step forward last month in advancing its trade agenda when President George W. Bush and the U.S. Congress negotiated a compromise that will allow two major free trade agreements — one

with Peru, the other with Panama — to move forward toward consideration and possible approval.

Trade Promotion Authority

This breakthrough lent momentum to congressional renewal of the president's Trade Promotion Authority (TPA, formerly called fast track trade negotiating authority), a crucial tool to allow the United States to negotiate future trade agreements and to participate in future World Trade Organization (WTO) negotiations.

TPA is the process by which Congress gives authority to the president and/or U.S. Trade Representative to enter into trade negotiations in order to lower U.S. export barriers. TPA expires on June 30.

State of World Trade

The United States has been attempting to promote development through the current "Doha" round of trade negotiations, including improved market access for trade between the more developed countries and requiring countries to lower their import tariffs on both industrial and agricultural products. U.S. trade representatives state that negotiations had reached an impasse, and criticism followed from the European Union directed at the U.S. position in Doha.

Without TPA, U.S. presidents will not have the authority to negotiate bilateral and regional trade deals, including international negotiations to open worldwide markets to free trade through the WTO.

Free Trade Benefits

Free trade has profound benefits for California's economy. Of the nearly 56,000 companies throughout the state that exported goods in 2004, 95 percent were small- and medium-sized enterprises with fewer than 500 employees. In 2005, California agricultural exports were estimated at \$10 billion, 32 percent of total agricultural revenue. In 2006,

California exported \$128 billion in manufactured goods to the rest of the world.

The WTO has had a tremendous impact on how California producers of goods and services compete in overseas markets, as well as domestically, and is creating jobs and economic growth through expanded international trade and investment. It gives businesses improved access to foreign markets and better rules to ensure that competition with foreign businesses is conducted fairly.

CalChamber Position

The California Chamber of Commerce has continually supported renewed TPA as a vital component for the President to negotiate trade agreements that will improve California companies' access to foreign markets, eliminating disincentives that impede the competitiveness of California business.

The CalChamber urges members to contact their congressional representatives to **support** TPA renewal before the June 30 deadline. For a sample letter, see the listing of federal bills at www.calchamber.com.

Staff Contact: Susanne Stirling

Independent Contractor Bill Moves in Assembly

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ees and employers alike would be better served by creating a clear, consistent, uniformly applied definition of an independent contractor.

The CalChamber is concerned that SB 622 could create a chilling effect on the use of independent contractors as an entrepreneurial workforce, which would damage the viability of businesses that use the services of independent contractors to address specialized needs. This can only add to pressures driving businesses out of the state and limiting opportunities for citizens to operate and grow their own small business in the industry of their choosing.

The CalChamber agrees that no one should intentionally misclassify an employee as an independent contractor in order to avoid employment tax, workers' compensation insurance, unemployment insurance, employee wage and benefits, and other legal obligations.

Existing federal and state laws and regulations provide government agency audit and enforcement authority and civil actions, as well as the ability to impose fines, penalties and interest to address misclassification violations.

Key Vote

Ayes: Fuentes (D-Sylmar); Laird (D-Santa Cruz); Leno (D-San Francisco);

Swanson (D-Oakland); Ruskin (D-Redwood City).

Noes: Gaines (R-Roseville); Strickland (R-Moorpark).

Absent/abstaining/not voting: DeSaulnier (D-Concord).

Action Needed

Contact your Assembly representative and members of Assembly Judiciary and ask them to **oppose SB 622**.

Staff Contact: Marti Fisher

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.

Proposal Undermining Workers' Comp Reforms Now in Senate



California Chamber of Commerce-**opposed** “job killer” legislation that rolls back cost-saving workers’ compensation reforms awaits action in the Senate after passing the Assembly by a vote of 48-24 on June 6.

AB 338 (Coto; D-San Jose) undermines the workers’ compensation reforms of 2004 and increases temporary disability costs in workers’ compensation claims by increasing the number of weeks benefits can be paid and creating a disincentive to use utilization review to enforce medical treatment guidelines.

AB 338 increases the cap on temporary disability benefits from 104 weeks to 156 weeks even though evidence suggests that a prompt return to employment after an injury reduces the injured worker’s long-term wage loss. Increasing the cap to 156 weeks would undermine incentives to return to work in the current system.

Moreover, the bill creates a number of situations in which the cap on temporary disability benefits would not apply,

thereby increasing the duration of benefits even past 156 weeks.

Provisions in AB 338 also punish an employer for the legal application of utilization review, the only way an employer can force medical providers to adhere to evidence-based medical treatment guidelines (one of the reforms) when requesting treatment.

The CalChamber has publicly declared its interest in resolving some of the problems posed by the current 104-week cap on temporary disability benefits. It is important, however, to do so in a constructive manner consistent with the original intent of the workers’ compensation reforms of 2004 embodied in SB 899 (Poochigian; R-Fresno).

AB 338 will cause significant harm to multiple aspects of these reforms, including undermining utilization review, tying employers’ hands in the dispute process and increasing confusion and litigation in the workers’ compensation system.

Staff Contact: Jason Schmelzer

Report: Container Tax Bill Takes Wrong Approach

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Beach, Los Angeles and Oakland.

Limiting Progress

In the report, CALMITSAC states that the correct approach is to negotiate public-private funding arrangements for high-priority infrastructure projects. Goods movement stakeholders must be given the opportunity to negotiate funding agreements.

If stakeholders are not allowed to negotiate funding agreements, there would be a drawn-out legal battle between shippers/maritime industry lawyers and those advocating a legislated fee.

The time spent fighting over this tax would “substantially limit progress made on the important infrastructure projects and environmental programs so badly

needed in California,” the report states.

Economic Growth

“This report confirms that SB 974 would be bad for California’s economy,” said Jason Schmelzer, CalChamber policy advocate. “A container tax would lead to unnecessary litigation and stifle private sector investment in port area infrastructure and environmental mitigation. The private sector stands ready to make real progress on these issues by entering into the types of public-private partnerships suggested by this report.”

The report found that “the only way to foster true public-private partnerships is to first demonstrate real value to the various stakeholders, and then negotiate shared funding responsibility.”

A container tax, according to the

report, would have a negative impact on the state and national economies, hurt opportunities for upward mobility for blue collar workers, reduce tax revenue and result in other negative social impacts.

The report suggests that in lieu of legislatively mandated fees, industry, government and other stakeholders should negotiate joint public-private structures to fund a defined list of freight mobility and environmental mitigation projects.

Action Needed

SB 974 awaits action in the Assembly Natural Resources and Assembly Transportation committees. Contact committee members and urge them to **oppose SB 974**.

Staff Contact: Jason Schmelzer

CalChamber Backs Medical Networks' Ability to Control Workers' Compensation Costs

The California Chamber of Commerce recently filed a "friend of the court" brief to protect medical provider networks and their ability to control costs under the successful workers' compensation reforms of 2004.

In the case of *Palm Medical Group, Inc. v. State Compensation Insurance Fund (SCIF)*, the issue before the court is whether the common law doctrine of "fair procedure" extends to situations where a group seeks admittance to a medical provider network. Palm Medical Group is attempting to apply the doctrine of "fair procedure" in order to challenge SCIF's decision to deny Palm's request to be in its medical provider network.

Precedent-Setting Case

The CalChamber believes that the Palm decision will set a precedent for medical provider networks in the post-workers' compensation reform era.

In its brief, the CalChamber argues that the Legislature's intent in implementing the workers' compensation reforms was to reduce the skyrocketing cost of workers' compensation premiums for California employers. The CalChamber is most concerned that an unfavorable ruling in this case will undermine the Legislature's efforts to reduce costs by preventing fraud and ensuring medically appropriate care through the creation of medical provider networks.

Right to Determine Members

The reform law passed by the Legislature and signed by Governor Arnold Schwarzenegger in 2004 clearly states, "In developing a medical provider

network, an employer or insurer shall have the exclusive right to determine the members of their network."

The reform legislation, CalChamber-supported SB 899 (Poochigian; R-Fresno), made fundamental changes in the way the workers' compensation system determines the level of injury and the amount of disability assigned to an injury, and created a new

medical network to provide quality, cost-effective care to workers.

The reform package ensured that medical treatment follows nationally recognized guidelines and set clear parameters for what is acceptable treatment for injured workers in the system, while also reducing excessive litigation.

Staff Contact: Erika Frank



CalChamber in Court

CalChamber Opposes Legislation Restricting Housing Development



A California Chamber of Commerce-opposed bill imposing unworkable housing development restrictions will be heard in the Senate Natural Resources and Water Committee on June 26.

AB 5 (Wolk; D-Davis) stops new housing development in the Central Valley by punishing new development for the failure of local agencies to develop flood control plans, which are based on information not available until 2011.

AB 5 requires new homes to include flood insurance until the property achieves as-yet-undetermined flood protection standards. This open-ended requirement gives governmental agencies the green light to go slow when pursuing flood protection efforts.

AB 5 also attempts to make builders responsible for ensuring that homeowners obtain flood insurance long after the initial purchase.

Builders have no notice of expiration of policies, no renewal notices and no notice of when a home is sold, requiring new insurance to be placed. Flood insurance is sold on an annual basis only. It is impractical to ask builders to be responsible for maintaining insurance after the initial transaction.

Barriers to Improving Levees

AB 5 establishes criteria for projects to improve the performance of the facilities of the State Plan of Flood Control in urban areas based on a determination, among other things, that improvements will not impair or impede future changes to regional flood protection or the Central Valley Flood Protection Plan.

Such a determination can be made only after the state Department of Water Resources (DWR) has adopted the Central Valley Flood Protection Plan, which will not occur until January 1, 2011. This provision would delay critical levee improvements that are ready to be implemented now or before 2011 that

could save lives and millions of dollars in property damage.

The bill also defers determination of the level of flood protection required for urban areas, rural areas and small communities to the DWR, which will delay development of local flood protection plans. These flood protection standards, rather, should be specified within the bill to allow local agencies to develop local plans without having to wait two years for the DWR to make that determination.

Similar Obstacles

Also to be considered is **AB 1452 (Wolk; D-Davis)**, which also creates obstacles to levee improvements and defers determination of flood protection criteria to the DWR.

Action Needed

Contact your senators and members of Senate Natural Resources and Water to urge them to **oppose AB 5** and **AB 1452**.
Staff Contact: Valerie Nera

Heat Illness Prevention Keeps Employees Cool as Temperatures Rise

The heat is on! Reinforce safe work habits in hot environments and satisfy new heat illness regulations/training requirements in California with the *Heat Illness Prevention Kit* from CalBizCentral.

This training solution includes 1 *Heat Illness Safety and Prevention* poster and 5 *Heat Illness Prevention in California* mini-books with removable wallet cards — all of which can be used as staff-training tools to avoid, identify and, if necessary, take action to treat heat illness symptoms in employees.

Member Price: \$36 (excludes online). Non-Members: \$45.
Additional posters and mini-books can be purchased separately.

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