

ALERT

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Ask Legislators to Back 4-Day Workweek Proposal



SUPPORT

The California Chamber of Commerce is urging employers and employees to contact their Assembly representatives to express support for legislation providing workplace

flexibility before the bill's hearing on April 18.

The CalChamber-sponsored bill, **AB 510 (Benoit; R-Bermuda Dunes)** will improve workplace flexibility by permitting *individual* workers and their employers to mutually agree to a four-day workweek.

AB 510 will be considered first by the Assembly Labor and Employment Committee.

AB 510 will permit an individual employee, with the consent of his/her

employer, to work up to 10 hours per day within a 40-hour workweek without overtime pay. Overtime premium pay still would be required for more than 10 hours of work in a workday or 40 hours in a workweek, as would double-time after 12 hours in a day.

Using the CalChamber grassroots action center, employers and employees have sent more than 9,300 letters urging their representatives to support the legislation.

Continuing Support

Cathy Mesch, CalChamber grassroots coordinator, has been working to recruit volunteers to testify in support of AB 510. Several local chambers of commerce, as well as employers and employees, plan to attend the hearing and

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Hearing Set for CalChamber-Sponsored Bill to Simplify Language in Workplace Posters



SUPPORT

California Chamber of Commerce-sponsored legislation aimed at making workplace posters easier to understand is set for an April 18 hearing in the Assembly Labor and Employment Committee.

CalChamber-supported **AB 613 (Tran; R-Costa Mesa)** will benefit both employers and employees by establishing a working group of employee and employer representatives to ensure current

state-mandated workplace posters use simple, plain language.

Benefits

Plain language in workplace postings ensures employer compliance with labor laws and clearly informs workers of their rights, diminishing feelings of insecurity, frustration and anger on the part of both employers and employees.

If plain and simple language is used to write the posters, then new postings will use common, everyday words, short

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CalChamber Opposes Health Care Tax on Small Employers



OPPOSE

The California Chamber of Commerce is **opposing AB 8 (Núñez; D-Los Angeles)**, which imposes a tax on small employers who can't afford to provide health care coverage.

The Assembly Health Committee is scheduled to consider AB 8 on April 17.

AB 8 requires employers to provide health care coverage or pay a new payroll tax, which should require approval by a two-thirds vote, although the bill has not been classified that way by the Legislature.

The AB 8 mandate is broad in scope and provides no exemptions, but does not apply to the self-employed.

"If an employer can't afford to provide health care coverage for their employees today, they won't be able to afford to pay the health care tax in AB 8 tomorrow," said CalChamber President Allan Zaremberg. "Simply mandating coverage doesn't make it any more affordable. Nothing in AB 8 makes health care coverage any more affordable for the employer even though high costs are the main reason employers can't provide health benefits."

AB 8 also appears to allow a government agency to compete with the private

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Labor Law Corner

Paid Time Off Banks Can Simplify Accrual, Use of Vacation/Sick Leave



Sunny Lee
Senior Labor Law
Consultant

What is a PTO policy? What are the benefits and detriments?

A paid time off (PTO) policy is an employee benefit that combines all paid time away from work (vacation and sick leave) into one "bank" of paid time off.

The advantage of a PTO policy is a

perception of fairness; all employees are provided with the same paid time off, regardless of the reason. Often, employees become disgruntled when other employees are using paid sick leave while employees who are not sick don't have the opportunity to use that paid time off.

Because an employer does not need to deal with two banks of time, PTO also is easier to administer.

Time Off Banks

Before adopting one bank of paid time off, an employer should consider the following issues:

- The state vacation pay regulations treat the entire PTO bank as vacation for purposes of final pay. An employer is required to pay an employee all accrued, unused PTO at termination. In contrast, there is no requirement to pay out sick leave, and if an employer keeps that bank of time separate, the employee is not entitled by law to that unused time at termination.

- Likewise, all of the time in a PTO bank is treated as sick leave for purposes of kin care. Kin care allows an employee to use up to half of the accrual of sick leave to tend to an ill child, parent, spouse or domestic partner, or for medical or dental appointments. Unlike vacation that is scheduled in advance, sick leave is more likely to involve more unscheduled time off work and may result in more unplanned absences.

If an employer has issues with either of these legal requirements, it may be better to maintain separate vacation and sick leave policies.

PTO Accrual

Typically, PTO is accrued like vacation on the basis of hours worked per pay period, whereas sick leave often is granted on the basis of a specified number of days per year.

If an employee was ill in January with the flu, he/she may not have accrued enough PTO to take the time off with pay. This may work a hardship on the employee who needs the paid sick leave now and not later in the year. A traditional sick leave policy typically would allow an employee to use the full amount of sick leave when needed at any time throughout the year.

Although an employee needing time off due to illness may not be an issue if an employee has accrued PTO time, for those who have not, an employer should consider that an employee may come to work sick because he/she cannot afford to go without pay. State disability insurance may apply in some cases, but it is available only after a waiting period of seven days, and a doctor must certify that the employee is unable to work.

Interaction with Leaves

Policies that require that an employee use PTO when on a leave of absence cannot be enforced when an employee is on a pregnancy leave. Unlike the federal Family Medical Leave Act (FMLA), which will allow an employer to force the use of PTO, state law forbids forcing an employee to use her vacation or PTO during a pregnancy leave.

Becoming aware of these issues in advance will help employers to alleviate problems down the road. Obviously, since neither sick leave (with the exception of San Francisco County) nor vacation are benefits required by law, the employer should select benefits that are consistent with the business's best interests and philosophy.

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.

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2007 Human Resources Legislative Action Forum. Cal-SHRM. April 22-24, Sacramento. (916) 705-3398.

International Trade

9th Annual Trade Policy Forum 2007. California Council for International Trade. April 19-20. Silicon Valley. (415) 788-4127.



California Supreme Court to Settle Workers' Comp Apportionment Issue

The California Supreme Court heard arguments April 3 on how to apportion employer responsibility for a permanent disability, moving a step closer to deciding between differing opinions from several state courts of appeal.

At issue is whether future workers' compensation cases should apportion an employer's liability for a permanent disability by subtracting percentages of an employee's disability as a result of a work-related injury — the approach supported by the California Chamber of Commerce — or by subtracting the dollar value of the injury.

The state high court is reviewing the case of *Welcher v. Workers' Compensation Appeals Board et al.*, along with the cases of *Strong v. Workers' Compensation Appeals Board et al.*, *Lopez v. Workers' Compensation Appeals Board et al.*, *Williams v. Workers' Compensation Appeals Board et al.* and *Brodie v. Workers' Compensation Appeals Board et al.*

CalChamber-Supported Ruling

The 3rd District Court of Appeal agreed with the CalChamber approach in a September 2006 ruling in the *Lopez*

case. In agreement with a friend-of-the-court brief filed by the CalChamber, the 3rd District found that the 2004 workers' compensation reform legislation did not change the formula for calculating apportionment from a percentage-based formula to a dollar-based formula. The court also agreed that the reform legislation did not intend to change the formula.

The apportionment method was adopted by the California Supreme Court 30 years ago in *Fuentes v. Workers' Comp Appeals Bd.* (1976) 16 Cal.3d 1 (*Fuentes*).

2004 Reforms

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.

Included in the reform package were changes in the law designed to bring rationality to the process of determining which conditions contributed to an injury and how

much, so employers would be responsible for only the portion of an injured worker's disability resulting from the existing job-related injury.

The Supreme Court has 90 days to issue an opinion in the case.

Staff Contact: Erika Frank



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Assembly Committee Hearing Near for 4-Day Workweek Bill

From Page 1

express their support.

Laura Lee Eckstein, human resources manager for Don's Tire Service, Inc. in Berkeley, said she plans to testify and supports AB 510 because the employees at her workplace would benefit from the flexibility.

"Several of my employees could use the spare time to spend with their families," Eckstein said. "It would give us some latitude. Employees can decide what's better for them and we can accommodate them."

Eckstein added that the legislation would help allow her to accommodate each individual employee; under current law, all employees would have to go through a rigidly controlled process to agree to a four-day workweek.

Retention is another concern for employers who cannot currently provide flexibility to their workers. AB 510 would help to alleviate these concerns on both ends.

"We can accommodate each employee to what really works for them," Eckstein said. "The more I can do to keep my employees, the better we will be."

Scott Raty, president and chief executive officer of the Hayward Chamber of Commerce, also plans to attend the hearing with a delegation of employers and employees in support of the bill.

Raty said the Hayward Chamber favors the legislation as a quick way to alleviate traffic concerns around the city.

"Year in and year out, traffic ranks as the greatest concern among Bay Area residents and employers alike," Raty said.

"AB 510's flex work schedules and a four-day workweek will provide near-immediate relief to peak-hour commute congestion at no expense to taxpayers while benefiting working families who may opt to recover valuable personal time they now sacrifice in stop-and-go peak-hour commutes, five days a week."

Current Law

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

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

Under current and very detailed California Industrial Welfare Commission wage orders, employers may institute alternative work schedules only if the affected employees agree to the arrangement in writing and by secret ballot.

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

The rules also state that daily work schedules are limited to a maximum of 10 hours per day, with a four-hour daily minimum. Variances in schedules or the use

of more than one schedule is prohibited without repeating the voting process.

This complex process in effect eliminates most employers and employees from choosing schedule options such as flex-time, part-time, job sharing, telecommuting and compressed workweeks. Employers that are offering a staggered work schedule without going through an election process are operating in violation of the law.

Action Needed

The CalChamber strongly believes that permitting individual workers and their employers to arrange and use a four-day workweek will give employees more flexibility and employers the ability to be more responsive to employee work/life needs.

Write committee members and your Assembly representative and urge them to **support AB 510**.

For an easy-to-use sample letter, visit www.calchambervotes.com.
Staff Contact: Marti Fisher

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Hearing Set for Bill to Simplify Language in Workplace Posters

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sentences, and terms and definitions that are simply and clearly defined.

AB 613 proposes to assemble a working group composed of equal numbers of employer and employee representatives, overseen by the state 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.

Any recommended revision to a required posting will not diminish or increase any employee right or protections or any employer liability or duty. All of the working group's recommendations are to be transmitted to the Legislature for consideration and possible action.

Action Needed

The CalChamber is urging employers to contact members of Assembly Labor and Employment before the hearing date

and encourage them to **support AB 613**.

An easy-to-use sample letter and other tools to help you contact your legislative representatives are available at www.calchambervotes.com. More than 3,000 letters already have been sent using the CalChamber grassroots center.

In 2006, similar legislation failed to pass the committee on a party-line vote, with Republicans in support and Democrats opposed.

Staff Contact: Marti Fisher

U.S., Korea Conclude Negotiations on CalChamber-Backed Trade Agreement



The United States and the Republic of Korea have concluded negotiations on the California Chamber of Commerce-supported U.S.-Korea Free Trade Agreement (FTA), which will contribute to regional and global trade liberalization.

“The U.S.-Korea FTA is the biggest free trade pact the United States has reached since it entered into the North American Free Trade Agreement over a decade ago,” said Susanne Stirling, CalChamber vice president of international affairs. “This FTA sends a strong signal that the United States intends to remain heavily engaged in the region for a long time to come in business, economics, security and international politics.”

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.

Impact

U.S. companies hope that a bilateral agreement with Korea will enable them to sell more cars, pharmaceutical products and financial services in Korea. The FTA would eliminate the 8 percent tariff Korea currently has on imported vehicles.

The FTA would increase U.S. exports to Korea by 54 percent and Korean imports to the United States by 21 percent, according to a study by the U.S. International Trade Commission completed in September 2001.

Korea’s commercial relationship with the United States is largely complementary. In 2006, two-way trade between the two countries topped \$78 billion. Korea is the seventh largest trading partner of the United States, and the 11th largest economy in the world.

Korea is California’s fifth largest exporting partner. In 2006, California exported \$7 billion to Korea. The U.S.-Korea Business Council believes the conclusion of a bilateral investment agreement would bring significant benefits to both economies and foster strengthened economic ties between the two countries.

Before negotiations on the FTA, Korea and the United States had been negotiating a bilateral investment treaty for more than three years. Concluding the agree-

ment locks in many of the positive reforms that the Korean government has put in place over the last several years. It would obligate the government to offer U.S. firms investing in Korea the better of most favored nation or national treatment, provide access to investor-state dispute settlement mechanisms, help ensure the free movement of capital and qualified management staff to support investments and, in the event of an expropriation, guarantee U.S. investors fair and just compensation.

The agreement also would help to ensure that the Korean government will continue moving toward more transparency in developing and enforcing regulations governing investments. Korea, in turn, would benefit from increased foreign investment in its economy. By signing the agreement with the United States, Korea would be signaling to global investors its intention to remain on its current course of deregulation and reform.

Anticipated Action

This resolution of negotiations comes just three months before U.S. President George W. Bush’s power under trade promotion authority to sign trade deals without their being subject to congressional amendment is due to expire. Both countries’ legislative bodies must still approve the FTA.

Staff Contact: Susanne Stirling

Local Chambers Active in International Arena, Survey Shows

Local chambers of commerce are continuing to remain active in the international arena, according to a survey just completed by the California Chamber of Commerce.

“International trade is one of the most important and exciting topics of our day and plays a major role in our economy,” said Susanne Stirling, CalChamber vice president of international affairs. “It makes sense for local chambers of commerce to have active programs, given that one in every four jobs in California is tied to international trade.”

Key findings of the survey include:

- 75 percent of local chambers issue certificates of origin, the documentation required by countries to show the source of goods that are to enter their boundaries.
- Overall, 64 percent of chambers are involved in international trade activities; 26 percent have been involved for more than 10 years.
- Nearly one in five chambers (19 percent) participates in trade missions to foreign nations.
- 12 percent put on “how to export” or related seminars.
- About 21 percent of chambers take

positions on international trade-related policy issues.

● Of those chambers monitoring international trade issues, there were 58 percent following state international trade-related legislation/programs; 52 percent free trade agreements; 45 percent federal international trade-related legislation/programs; 18 percent the World Trade Organization; and 15 percent trade promotion authority.

For more information on international trade and international resources, visit www.calchamber.com/international.

Staff Contact: Susanne Stirling

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, easy-to-edit sample letters on hot topics 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.

CalChamber Backs Increase in Research/Development Tax Credit



SUPPORT

California Chamber of Commerce-**supported** legislation that will strengthen California's economy by encouraging investments in California-based research and development activities and jobs will be considered by the Senate Revenue and Taxation Committee on April 25.

SB 928 (Harman; R-Huntington Beach) increases California's research and development (R&D) tax credit from 15 percent to 20 percent and increases the alternative incremental credit in conformity with federal law. The bill also provides a tax credit for a portion of donations made by biotech and pharmaceutical companies to cancer research institutions.

California currently ranks first in the nation in R&D performance, accounting for more than one-fifth of total U.S. R&D. California universities rank number five in total R&D expenditures nationally. Nevertheless, California cannot afford to rest on its laurels.

The CalChamber believes that California needs to proactively maintain and expand its leading edge in R&D innovation and talent, as it competes for

R&D investments, jobs and knowledge capital, not only with other states, but other countries, like India and China, which are working aggressively to expand their innovation output.

The 2006 Pollina Corporate Real Estate, Inc. study reports that growing numbers of Silicon Valley professionals are heading to India to start new businesses with U.S. funding or to expand R&D labs for Silicon Valley companies. Meanwhile, the Chinese government has tripled its spending on R&D since 1998.

Strengthening California's R&D credit will bolster R&D activity in both the industry sector and California universities, stimulating the state's economy with additional investments and jobs and helping California to maintain its R&D leadership.

Action Needed

Contact your senator and members of Senate Revenue and Taxation and ask them to **support SB 928**.

For an easy-to-use sample letter, visit www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

Electronic Health Records Bill Moves in Assembly



SUPPORT

California Chamber of Commerce-**supported** legislation to take the first step to create electronic personal health records is moving through the Assembly.

AB 1057 (Beall; D-San Jose) improves value, quality and safety for consumers of health care by taking the first step to create electronic personal health records through an interactive advisory process to create a strategic plan for implementation. The bill will begin the process of creating the framework for the delivery of health information technology to improve the health care system and provide cost containment for the long term.

Personal health records can be the first, most easily achievable step toward building a network of electronic health

records systems connecting patients, providers and payers. According to the Centers for Disease Control and Prevention, the use of information technology has the potential to improve quality of care through reduced medical errors and improved efficiency.

An effective and comprehensive personal electronic health records system can reduce the paperwork burden and cost of chart pulls while improving efficiency and safety in prescriptions and coordination of care between primary and specialty providers.

AB 1057 passed the Assembly Health Committee on April 10 by a vote of 11-4. The bill will be heard next by the Assembly Judiciary Committee.

Staff Contact: Marti Fisher

CalChamber Stops Bill Reducing Market Competition for Wireless Consumers



OPPOSE

A California Chamber of Commerce-**opposed** bill that would have caused frustration and increased costs for wireless customers failed to pass the Senate Energy, Utilities and Communications Committee this week.

SB 158 (Florez; D-Shafter) requires that mobile phone service providers, upon request of the consumer, deactivate any device in a mobile phone that prevents the consumer from receiving service from another provider. Consumers may request such deactivation only upon the completion of the contract with the original service provider.

In opposing SB 158, the CalChamber pointed out it often is not technically feasible to simply “unlock” a mobile and allow a consumer to take his/her phone and business to another service provider. Service providers are using different technologies to deliver services to consumers, so a technology suitable for one type of phone is not suitable for another similar phone made by the same manufacturer.

The CalChamber believes that SB 158

could erode consumer choice by eliminating product and service differentiation in favor of a more expensive and less utilitarian statutory standard for handsets. Consumers gain material benefits from a robust and competitive market that allows carriers to differentiate themselves from their competitors. Wireless phone service is accessible to almost all Californians due to its affordability and the ability of carriers to use different technologies and network features.

Key Vote

SB 158 failed to pass Senate Energy, Utilities and Communications, 4-4, April 10, but was granted reconsideration.

Ayes: Kehoe (D-San Diego), Padilla (D-Pacoima), Ridley-Thomas (D-Los Angeles), Wiggins (D-Santa Rosa).

Noes: Battin (R-La Quinta), Calderon (D-Montebello), Cox (R-Fair Oaks), Dutton (R-Ranch Cucamonga).

Absent, abstaining, not voting: Simitian (D-Palo Alto).

Staff Contact: Dominic DiMare

CalChamber Opposes Health Care Tax on Small Employers

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sector in providing and marketing health care coverage, taking the state down the road toward a government-run health care system. California voters rejected government-run health care in 2004, overturning CalChamber-opposed SB 2 (Burton; D-San Francisco), a multibillion-dollar health care tax that appeared on the ballot as Proposition 72.

Significant Tax Likely

AB 8 does not yet specify the level of taxation (a percentage of payroll) for employers who do not provide health coverage. The tax increase needed to finance the level of benefits AB 8 describes, however, is likely to be significant.

For example, the coverage described in the bill is comparable to that of a typical health maintenance organization (HMO)-style plan, for which the average premium in 2006 was \$342 a month for an individual.

Covering that cost would require at least a 20 percent payroll tax for a \$10 per hour employee, just to fund health insurance for the individual.

Two-Thirds Vote Needed

The CalChamber believes the bill's designation as one needing only majority approval is in violation of Proposition 13, which requires all tax increases to be passed with a two-thirds vote of the Legislature.

This distinction is especially critical because health care inflation is growing at twice the rate of payroll for low-wage employees (who make up most of the California workers who lack health coverage). That differential will increase the pressure for additional tax hikes in the future.

Given that AB 8 includes no cost controls, another question to consider is its impact on other state operations. If AB 8 establishes an expensive government program without providing sufficient revenues to pay for it, will that underfund other state programs, such as public safety and education?

AB 8 also may violate federal employment benefits law. A recent court decision affirmed that any employer health care mandate violates the federal law designed to establish uniform rules nationwide to

protect multi-state employers from having to contend with numerous differing state requirements regarding benefit plans.

Health Care Discussions

Other health care reform plans have been outlined by both Governor Arnold Schwarzenegger and Senate President Pro Tem Don Perata (D-Oakland). A comparison chart appeared in the January 26 *Alert*.

The administration has been convening meetings with health care experts and representatives of various groups interested in reshaping California's health care system, including the CalChamber, to review elements of the Governor's proposal.

Subjects covered have included benefits that should be offered low-income individuals, the design of the health insurance purchasing pool, how the proposal is to be financed and how its provisions are to be enforced. The Governor's proposal is not yet in print.

Action Needed

Contact members of Assembly Health and your Assembly representative and urge them to **oppose AB 8**.

Staff Contact: Marti Fisher

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