

ALERT

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 **CalChamber**[™]
CALIFORNIA CHAMBER OF COMMERCE

Democratic Health Care Proposal Allows Government Agency to Raise Payroll Taxes



All employers need to be very concerned about the financing scheme in the latest joint health care proposal by the Democratic leadership in both the Senate and Assembly.

Basically, the proposal — **strongly opposed** by the California Chamber of Commerce — sets up a government-run health care system for employees who don't receive health care from their employers, financed almost exclusively by a payroll tax on all employers who don't spend a certain level of

funding on employee health care. The tax increase could exceed \$6.5 billion.

"All employers — including those currently providing health care to their employees — should be very concerned about the Democratic leadership's revised health care reform bill, AB 8," said CalChamber President Allan Zaremborg. "While it imposes a new payroll tax of 7.5 percent on employers who don't currently spend that much on health care, early calculations indicate that tax will raise substantially less than the revenues required to provide the benefit package indicated in the bill.

"Since AB 8 gives an unelected

volunteer board of bureaucrats the new right to increase the health care payroll tax as needed for costs, it seems virtually certain the payroll tax will have to be increased substantially, well beyond what most employers pay in health care costs today. This increase in what all employers will have to 'pay or play' is even more likely when you consider that health care costs have risen at twice the rate of low-wage payroll growth in recent years, worsening the future gap between revenues and expenses in this new government program."

Underfunded Mandate

A look at the makeup of the uninsured in California quickly demonstrates why it is likely that the benefit package in the new government health care program would require revenues from a much higher tax rate than the 7.5 percent of Social Security wages initially placed in the proposal.

Other than people with a pre-existing condition, the vast majority of Californians without health insurance are individuals employed in lower-wage jobs. Neither they nor their employers can afford to buy health care coverage.

Nearly two-thirds of uninsured Californians live in households with income less than 200 percent of the federal

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CalChamber Hosts European Union Ambassador



California Chamber of Commerce President Allan Zaremborg and European Union Ambassador John Bruton open the question-and-answer session following the ambassador's address to more than 80 guests at the CalChamber's June 26 international dinner forum. See story on Page 7.

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Cal/OSHA Corner

Cal/OSHA Can Cite Employers for Employee Exposure to Heat Stress



Mel Davis
Cal/OSHA Consultant

What can I do to protect my employees from the effects of working in high temperatures?

July is almost here, and we certainly will be treated to a series of days with temperatures well over 100 degrees.

With the rising temperatures, employ-

ees may be subject to a condition known as heat stress. Operations involving high air temperatures, radiant heat sources, high humidity, direct physical contact with hot objects or strenuous physical activities have a high potential for inducing heat stress.

During the summer, workers employed in outside jobs, such as construction and agriculture, are subjected to many of these conditions, and those who ignore the signs and symptoms can become victims of a heat stress incident.

Get Informed

It has been well publicized that Cal/OSHA has adopted regulations for outdoor workers to address the employer's responsibility to ensure employees are provided means to counter the effects of working in high temperatures.

These requirements, Heat Illness Prevention in Outdoor Places of Employment, are contained in Section 3395 of the General Industry Safety Orders. Cal/OSHA also has published several informational documents on its website, www.dir.ca.gov. This information can be found by clicking on "New — Heat Illness Prevention."

In addition, the CalChamber has developed a *Heat Illness Prevention in California* mini-book for its members. The mini-book is written in both English and Spanish and has readily understood illustrations of the outward symptoms of heat illness. Information on how to obtain this booklet can be found on www.calbizcentral.com.

Preventive Training

Before employees can work outdoors, employers are required to provide them with heat illness prevention training.

This mandatory training for supervisors and employees under the new standard includes an employer's heat illness prevention plan and procedures, plus other heat-related topics, such as:

- environmental and personal risk factors;
- importance of acclimatization (allowing the body to adjust gradually to the work in high heat);
- type of heat illness and the signs and symptoms;

- procedures for responding to symptoms;
- obtaining emergency services; and
- communications.

Causal Factors

Several causal factors may affect a person's sensitivity to heat, including:

- age;
- weight;
- degree of physical fitness;
- degree of acclimatization;
- metabolism;
- type of clothing worn;
- use of alcohol or drugs; and
- a variety of medical conditions, such as hypertension.

Prior heat injury predisposes an individual to additional injury.

Heat Stress Indicators

Four conditions must be recognized by supervisors of employees potentially exposed to heat stress: heat rash or prickly heat, heat cramps, heat exhaustion and heat stroke. Both the Cal/OSHA website and CalChamber mini-book contain detailed descriptions and symptoms of heat stress-related illnesses with intervention treatments.

Specific measures can be adopted to lessen the likelihood of a heat stress illness, such as:

- Administrative controls, such as work rotation, starting work early in the morning or in the evening;
- Providing plenty of fluids to drink, especially water; and
- Personal protective equipment in the form of cooling vests and light-colored or reflective clothing and/or shade.

Useful for All Employees

Although Section 3395 is specific to outdoor workers, the requirements can be useful to all employers who have

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CalChamber Opposes Trio of Proposals Shifting Unregulated Costs onto Business



Several California Chamber of Commerce-opposed “job killer” bills that increase costs to businesses by shifting the development of “green building” standards for residential, commercial and state government construction to state entities without experience in the area will be considered soon in Senate committees.

AB 1058 (Laird; D-Santa Cruz), AB 888 (Lieu; D-Torrance) and AB 35 (Ruskin; D-Redwood City) make the California Environmental Protection Agency (CalEPA) the lead entity responsible for developing “green building” standards.

By shifting the development of these standards from the Building Standards Commission, which considers cost impact in its development of standards, the bills place on businesses the burden of these unregulated costs.

The CalChamber believes the California Building Standards Commission should serve as the lead administrative agency that would coordinate the development of the individual components by agencies having specific subject expertise and authority.

‘Job Killer’ Bills

- **AB 1058** requires the CalEPA to develop and make available a set of mandatory “green building” best practices for new residential construction by July 1, 2013.
- **AB 888** requires the CalEPA to develop and make available a set of mandatory “green building” best practices for construction of non-residential commercial buildings by July 1, 2013.
- **AB 35** requires the CalEPA by July 1, 2009, to adopt regulations for “sustainable building standards” to be used during the construction or renovation of state buildings.

AB 1058 and AB 888 specifically exclude the “green building” best practices and mandatory minimum building standards from having to comply with the Building Standard Commission’s administrative review and adoption process to which all other state building standards are subject. As a result, the “green building” standards will not be required to meet any of the criteria required of all other building standards, including the criteria related to cost impact or conflicting with other building standards.

AB 35 requires the CalEPA to consult the Building Standards Commission to ensure the “sustainable building standards” do not conflict with existing state building code, but the bill specifically exempts the new standards from complying with the administrative review and adoption process utilized by the Building Standards Commission. These new standards also would not be required to meet criteria related to cost impact.

Although the CalChamber supports sustainable building practices, these proposals should be considered within the same administrative process that was established for the review and approval of building standards related to structural safety, seismic safety, fire and life safety, energy efficiency and disabled accessibility.

The CalChamber agrees that other appropriate agencies should be involved in the development of the individual

“green building” components that would make up the best practices manual. The administration has made it clear that the California Building Standards Commission should lead the development.

Key Vote

AB 1058 was approved by the Senate Transportation and Housing Committee on June 26 on a party-line vote of 7-4.

Ayes: Cedillo (D-Los Angeles); Corbett (D-San Leandro); Kehoe (D-San Diego); Lowenthal (D-Long Beach); Simitian (D-Palo Alto); Torlakson (D-Antioch); Yee (D-San Francisco).

Noes: Ashburn (R-Bakersfield); Dutton (R-Rancho Cucamonga); Harman (R-Huntington Beach); McClintock (R-Thousand Oaks).

Action Needed

AB 888 and AB 35 are scheduled to be heard by the Senate Environmental Quality Committee on July 2. AB 1058 is awaiting its next hearing date, also in Senate Environmental Quality.

Contact your Senate representatives and urge them to **oppose AB 1058, AB 888 and AB 35.**

Staff Contact: John Hooper

Oakdale Chamber Receives HR Partner Award



Mary Guardioli, chief executive officer of the Oakdale District Chamber of Commerce, accepts a California Chamber of Commerce HR Partner of the year award from Dave Kilby, CalChamber executive vice president, corporate affairs. The award recognizes local chambers of commerce that excel at working with the CalChamber in informing members about new state and federal laws.

Democratic Proposal Allows Government Agency to Raise Payroll Taxes

From Page 1

poverty level, according to a UCLA study. Three-fourths of the uninsured are in households with income below 300 percent of the federal poverty level.

For an individual, 200 percent of the federal poverty level equates to an hourly wage of \$10.13 (\$21,070 a year). For a family of three, 200 percent of the federal poverty level is the equivalent of a sole wage earner or a combined family wage of \$17.03 an hour (\$35,422 a year).

Therefore, collecting a tax of 7.5 percent of the low wages earned by most of the uninsured is likely to raise far less than the cost of health coverage. For revenues to match costs, if benefits are not cut or the employee cost sharing increased, the 7.5 percent payroll tax rate would have to be increased significantly for *all* employers in the new “pay or play” system.

For example, 7.5 percent of the wages of the \$10.13 an hour employee (200 percent of the federal poverty level) brings in less than half the cost of the average health insurance premium for individual coverage — \$382 per month. To collect the equivalent of that premium amount would require a tax rate of more than 20 percent of the individual employee’s wages, and even more for family coverage.

Although the Democratic proposal requires employees who are mandated to be in the new government program to contribute toward health care coverage on a sliding scale capped at no greater than 5 percent of wages, this will have a relatively small impact on the great disparity between the cost of the program and revenues received from employers of

employees not covered through work.

The disparity would worsen over time, given that health care inflation in recent years has grown twice as fast as low-wage payrolls.

Abdication of Tax Authority

What is most frightening about the Democratic proposal is that it grants to an unelected government bureaucracy — the Managed Risk Medical Insurance Board (MRMIB), unpaid appointees of the Governor and Legislature — the authority to increase the employer tax to whatever level it deems appropriate to pay for the comprehensive benefit package in the proposal.

Illegal Tax

If the employer tax is enacted by just a simple majority vote — which Democrats claim they can do, having labeled the tax as a “fee” — it will violate the state Constitution. When voters approved Proposition 13 in 1978, they placed in the state Constitution not only a cap on property tax increases, but also the requirement that all tax increases be approved by a two-thirds vote of the Legislature.

The Democratic proposal also appears to violate federal law. The federal appellate court has recently ruled that a “pay or play” scheme in Maryland violates the federal Employee Retirement Income Security Act (ERISA), which prohibits states from adopting legislation that requires multistate employers to have different obligations from state to state in how they deliver health care to their employees.

Affects All Employers

Any employers who already pay at least 7.5 percent of payroll for health care and think the legislation wouldn’t apply to them need to be greatly concerned that the tax ultimately will exceed their cost of delivering health benefits, given that just the revenue from employers of low-wage employees will be insufficient to fund the program.

Small businesses are *not* exempted from the requirement to provide health care or pay the new tax.

Other Provisions

Senate President Pro Tem Don Perata (D-Oakland) and Assembly Speaker Fabian Núñez (D-Los Angeles) announced on June 21 that they plan to merge their proposals into the Speaker’s bill, AB 8, compromising on provisions where their legislation had previously differed. SB 48, which formerly carried Perata’s proposal, has since been amended to deal with a different health subject by another author.

The Democratic proposal was not in print as *Alert* went to press, but based on the outline released when Democratic leaders announced the merger of their bills, other provisions include the following.

- In a major split from the Governor’s approach, individuals will not be required to purchase health care coverage.
- Insurers, however, will be required to issue coverage for anyone in the individual market without serious medical conditions.
- A high risk pool for individuals with serious medical conditions is to be “funded by a broad assessment on health plans.”

- The employer mandate and purchasing pool would go into effect in 2010.

- Existing insurance rules for small employers are extended to mid-sized employers with 51-250 employees, while rate bands in the mid-size group market are phased out.

July 11 Hearing

AB 8 is scheduled to be considered on July 11 in the Senate Health Committee. The CalChamber **opposes AB 8** and encourages employers to voice their concerns to their senators.

Staff Contact: Marti Fisher

Cal/OSHA Can Cite Employers for Heat Stress

From Page 2

employees subject to working in/at work-sites where the temperature/humidity can result in heat illness, such as poorly ventilated warehouses, and work processes exposing employees to high temperatures and/or humidity, such as foundries, glass bottle manufactures and construction sites.

Heat illness is a foreseeable hazard as defined and enforced by Cal/OSHA. Using Section 3395, employers can ad-

dress the conditions within a building or permanent worksite and prevent the occurrence of heat illness and include them in the company Injury and Illness Prevention Program.

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.

CalChamber Opposition Helps Stop House 'Card Check' Bill; Senate Bill Next



California Chamber of Commerce **opposed** federal legislation that would significantly change the process for employees to form unions failed to pass the U.S. Senate this week.

Introduced by California Congressman George Miller (D-Marti-

nez), HR 800 would have removed the secret ballot system and implemented a "card check" process instead.

The CalChamber has been a part of the fight to protect employee rights and defeat the bill, which was rejected June 26 by a vote of 51-48 (60 votes are required to proceed).

The U.S. House of Representatives passed the card check bill on March 1 by a vote of 241-185. The vote of the California congressional delegation split along party lines with Democrats voting for the card check bill and Republicans voting against it.

Senate Proposal Pending

A U.S. Senate bill also aiming to elim-

inate the secret ballot system is still under consideration. S. 1041, authored by U.S. Senator Edward Kennedy (D-Mass.), seeks to replace secret ballot elections with a signature collection process for employees to organize and join unions.

The current secret ballot system overseen by the National Labor Relations Board would cease to exist under the U.S. Senate proposal, opening the door for an environment of employee intimidation and coercion.

Because of the public nature of the proposed system, employees could experience immense outside pressure and could likely sign cards for reasons other than actually wanting a union to represent them, ranging from having a co-worker or close friend solicit them to more heavy-handed, potentially harassing tactics by union representatives.

The card check bill undermines an employee's democratic rights and protections of a fair and secret election to determine whether he or she really wants union representation.

The bill creates a system where unions hold all the cards and imposes fines up to \$20,000 on businesses offering any type of increase in salary or benefits during the open-ended election periods. This allows only the union to compete for votes,

and seems to penalize employees from reaping the benefits of employers offering them better wages and benefits.

Opponents of the proposed card check process note that it provides seemingly endless ways to get workers to sign cards for reasons other than wanting a union to represent them. Unions would have no deadlines by which to collect signatures.

Support for Secret Ballots

By joining the U.S. Chamber in opposing the bill, the CalChamber supports the current system of secret ballots as the best way to make sure employees' wishes are met.

The administration's statement pointed out that the National Labor Relations Act was amended in 1947 to provide workers the right to a private ballot following "widespread intimidation of workers during organizing drives in the 1930s and 1940s."

Action Needed

Contact U.S. Senators Barbara Boxer (D-Greenbrae) and Dianne Feinstein (D-San Francisco) and urge them to **oppose** the card check bill, **S.1041**, and support workers' rights to secret ballot elections. **Staff Contact: Marti Fisher**

CalChamber President Serving on Insurance Fraud Task Force

California Chamber of Commerce President Allan Zarembeg has been appointed to a first-of-its-kind state task force on insurance fraud.

The California Department of Insurance (CDI) Advisory Task Force on Insurance Fraud brings together public and private sector experts to develop innovative methods to combat insurance fraud. The task force includes leaders from consumer protection groups, as well as the judiciary, law enforcement community and insurance industry.

Strategic Plan

The task force is an integral part of

Insurance Commissioner Steve Poizner's 2007 Strategic Plan for the California Department of Insurance.

Insurance fraud costs California consumers and business an estimated \$15 billion per year.

The task force is made up of a Working Committee, which will produce findings and recommendations, and a Blue Ribbon Review Committee, which will approve the findings and recommendations in a final report.

Major Issues

Convening for one year before issuing its report this December, the task force will

address five major issues:

- efficiency of the CDI Fraud Division;
- anti-fraud efforts by the insurance industry;
- a review of criminal and regulatory statutes dealing with insurance fraud;
- new technology for the investigatory process; and
- outreach efforts by the CDI Fraud Division.

Staff Contact: Robert Callahan

Legislative Outlook

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

Senate Committee Passes Bill that Harms Small Employers



OPPOSE

A Senate committee this week approved a California Chamber of Commerce-**opposed** bill that substantially increases penalties that can be awarded against employers in administrative minimum wage claims filed with the Labor Commissioner.

AB 448 (Arambula; D-Fresno) passed the Senate Labor and Industrial Relations Committee on a party-line vote of 3-2 on June 27.

AB 448 harms small employers by allowing a new form of damages to be awarded against them in administrative minimum wage claims, above and beyond damages and penalties already provided in current law. Specifically the bill would allow liquidated damages to be awarded against employers in not just court actions, as provided in current law, but also administrative actions.

The CalChamber opposes this expansion of liquidated damages to administrative actions because the availability of liquidated damages in minimum wage claims is unjustified and oppressive. Liquidated damages are a type of punitive damages, equal to the amount of underpaid wages plus interest. The employee would be entitled to them if the Labor Commissioner finds against the employer. Although the employer may appeal the liquidated damages, the burden would be on the employer to show good cause for the underpayment.

Under existing law, employers, rightfully, in the event of underpaid minimum wages, must make the employee whole, paying the underpaid wages, plus interest.

Under AB 448, however, employers would in effect be required to pay double wages and double interest. This is unjustified as employers may also be subject to statutory penalties of \$100 or \$250 per pay period and California employers are burdened by an expansive number of wage and hour laws and regulations, along with substantial penalties for violations.

The CalChamber believes that AB 448's expansion of liquidated damages to administrative claims will be especially

harmful to small businesses. Although AB 448 aims to benefit low-income workers, it does not consider low-income small businesses.

Plaintiffs' lawyers are more likely to pursue court actions against large employers who will be perceived to have deeper pockets, meaning that administrative claims will more likely involve small employers.

Workers who make administrative claims under Labor Code Section 98 have their claims prosecuted at no cost to them by the state under a process designed so that they need not retain an attorney. The small employer, on the other hand, must expend time and resources to respond to the claim, even when the underpayment is inadvertent.

Key Vote

The 3-2 Senate Labor and Industrial Relations vote on AB 448 was:

Ayes: Kuehl (D-Santa Monica), Migden (D-San Francisco), Padilla (D-Pacoima).

Noes: Ackerman (R-Tustin), Wyland (R-Del Mar).

Staff Contact: Kyla Christoffersen

European Union Ambassador Discusses Market, Growth at CalChamber Dinner

The California Chamber of Commerce this week hosted His Excellency John Bruton, European Union Ambassador and Head of Delegation of the European Commission to the United States, at an international dinner forum and discussed ways to improve trade and business relations between Europe, the United States and California.

The more than 80 guests who greeted Ambassador Bruton on June 26 included California government officials and business people from California and the European Union, including representatives of agriculture, transportation, manufacturing and technology.

‘Room to Improve’

Bruton told the attendees that both the United States and European countries should be free to express their concerns about potential trade barriers and work toward resolving any discrepancies.

He said that there is room to improve on potential barriers that affect business, specifically redundant inspections and duplicative paperwork.

“We want to create a single, barrier-free, transatlantic market by ensuring that we have similar regulations,” Bruton said. “Not the same regulations, but similar. For example, if there are forms that need to be filled out for a new product, the forms are in the same format on each side of the Atlantic so that a company doesn’t have to duplicate their efforts. The decisions may be different; the U.S. may decide to authorize a product, while the EU may choose not to. But at least there is a similar system.”

He also addressed barriers at the border that prevent goods from moving to market. “We need to create a similar standard so that both the U.S. and EU recognize everyone’s test. There is a whole lot that can be done to make business easier across the Atlantic, which has nothing to do with trade or tariffs, but has to do with barriers behind the border rather than barriers at the border, and that’s an area well worth looking into,” Bruton said.

Growth of European Union

The goal of the European Union is



European Union Ambassador John Bruton

to ensure that the common market that has been created can move goods with the least resistance possible to other EU countries. But Bruton explained that it could be difficult to conduct business as the European Union grows.

“Our constitution requires every state in the European Union to agree to add a new member,” Bruton said. “The EU has gone from six, then to 15, now it’s up to 27 members, and at every stage each and every existing member has to agree to bring in the new members. We have been able to expand from 150 million people to 500 million people, from six countries to 27, unanimously.”

Ambassador Bruton explained what the European Union is, how it works and how it affects commerce and trade. “The European Union does three things for the 27 countries that are members. First, it creates internal market; secondly, it tries to adopt common foreign policy; and thirdly, it tries to create a common area of law and order in the 27 member states,” Bruton explained.

Foreign Policy

The United States is able to make foreign policy decisions much faster than the European Union, he said.

“Fundamentally in the U.S., one person decides foreign policy, and that is the elected president of the people,” Bruton said. “In the EU every important foreign policy initiative has to be agreed upon by 27 countries, and unless ALL of them agree fundamentally, we can’t make

foreign policy. One or two countries could hold it up.”

California-Europe Link

The scope of the transatlantic relationship between the European Union and the United States has grown tremendously in recent years. The European Union and the United States account for the largest bilateral trade relationship in the world. Transatlantic flows of trade and investment amount to around \$1 billion a day, and, jointly — almost 40 percent of world trade.

In 2006, California alone exported nearly \$25 billion in goods to the 27 EU countries — 20 percent of the state’s total exports. The European Union and the United States are long-standing, close allies on numerous issues, and the close friendship strengthens the pursuit of common goals and interests worldwide.

‘Biggest Investor’

Last year California sales to Europe grew by more than \$1.2 billion, Bruton said. “We are by far the biggest investor in the United States and the biggest investor in California. If you take just four of the 27 EU countries — United Kingdom, Germany, Netherlands and France — the countries are investing more each year in California than the entire Asia-Pacific region is investing in California,” he said.

California has a lot to gain with its investments in Europe, Bruton said. “There are huge beneficiaries of your investment, your technology and your ideas. Essentially, California owns a good chunk of Europe and we Europeans own a good chunk of California and the United States. So anything that hurts you hurts us, and anything that hurts us, hurts you. So it’s very important that we recognize that we need and depend upon one another.”

Bruton said that his overall goal is to “build a structure of understanding and cooperation between California and the European Union to ensure that our investment here is safe and our investment there is safe and that we both continue to prosper together.”

Staff Contact: Susanne Stirling

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.

Order today!



To order, call (800) 331-8877 or visit www.calbizcentral.com.



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