

ALERT

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CalChamber Supports Bipartisan ADA Proposal

Increases Access While Reducing Lawsuits



Ellen Corbett

The California Chamber of Commerce is **supporting** bipartisan legislation designed to promote and increase compliance with laws providing public access to individuals with

disabilities while reducing unwarranted litigation that does not advance that goal.

SB 1608 (Corbett; D-San Leandro) was amended this week to provide a comprehensive reform approach.

Joining Senator Ellen Corbett as authors of the bill are Senators Tom Harman (R-Huntington Beach), Darrell

Steinberg (D-Sacramento), George Runner (R-Lancaster) and Ron Calderon (D-Montebello). Principal co-authors are Assemblymembers Cameron Smyth (R-Santa Clarita) and Lois Wolk (D-Davis).

Response to Ongoing Problem

SB 1608 responds to a significant ongoing state problem — the small, but widely destructive, atypical group of plaintiffs and lawyers using the disability laws and court system to systematically extract monetary settlements from businesses rather than to improve disability access. Too often these lawsuits result in businesses closing their doors.

For example, one plaintiff has filed more than 700 ADA lawsuits in California alleging toilet paper dispenser heights do

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New Attempt to Roll Back Workers' Comp Reforms Moving

A California Chamber of Commerce-**opposed** bill attempting to roll back the historic workers' compensation reforms of 2004 is under consideration in the Senate.

SB 1717 (Perata; D-Oakland) increases workers' compensation costs for insured and self-insured employers by doubling permanent disability indemnity benefits paid to injured workers by 2011.

The CalChamber does not believe there is any statistically valid and objective evidence that supports the increase in benefits proposed by SB 1717. The decline in permanent disability (PD) benefits is due to the application of objective medical evaluations through American Medical Association (AMA) guidelines, the appropriate use of apportionment, the reduction of weeks for low ratings and return-to-work adjustments.

Cost Driver

A major reason for skyrocketing workers' compensation system costs before the reforms was the increasing number of PD claims, according to the Public Policy Institute of California. PD claims were filed at a rate of three times the national average, and California filings were 20 percent higher than the next highest state. A subjective system of work preclusions led to injured workers getting higher per-

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Labor Law Corner

Failure to Return from Leave Not Necessarily Job Abandonment



Sunny Lee
Senior Labor Law
Consultant

I have an employee who has been gone on eight months pregnancy leave. The owner fired her today for job abandonment. Is this legal? My understanding is we only had to hold her job for seven months.

Employees who have left work on a

pregnancy disability leave are protected for up to 88 working days by state law, unless your company policy or practice provides greater protection.

In this case, assuming that you placed the employee on a pregnancy disability leave, you would need to know when the employee was released to return to work or when she had the baby to determine the maximum amount of time that she could remain off work — unless of course you had provided other employees with more time.

It is unusual to have no communication about these issues. If the employee has not responded, you should contact her and ask

her when her doctor released her to come back to work. In a normal pregnancy, a woman is taken off work a short time prior to childbirth and released to return six to eight weeks after childbirth. Extenuating circumstances may be involved in a difficult pregnancy, premature birth or problems encountered after childbirth, which may certainly extend the leave.

Baby Bonding

After the employee is released to return to work, she may be entitled to additional time off work under the California Family Rights Act for baby bonding. If your company is legally required to provide her a leave, then she may qualify for up to 12 more weeks off, whether you approve that time or not.

In addition, if you have promised the employee eight months off work — even though not legally required to provide that much time — you would have to honor your own commitments.

Some companies with fewer than 50 employees have voluntarily elected family medical leave and therefore they should go by their own policy or practice of providing time off.

Other factors that may extend someone's right to be off work longer may involve permanent disabilities that the employee may have that may be protected by the Americans with Disabilities Act or California disability protection. Those

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Seminars/Trade Shows

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

Business Resources

GTC West 08: Conference on California's Future. Government Technology Conference, a division of e.Republic Inc. May 12-16, Sacramento. (916) 932-1300.

International Trade

EU Standards-Regulations Webinar. Export.gov. May 6.

World Trade Week Kickoff. Los Angeles Area Chamber. May 7, Los Angeles.

Global Awards Dinner. Bay Area World Trade Center. May 8, Oakland. (510) 251-5940.

Apparel Sourcing Show 2008. Guatemalan Trade Office. May 13-15, Guatemala. (213) 383-6938.

Shunde: Gateway to Success in the New China. Bay Area World Trade Center. May 29, San Francisco. (510) 251-5940.

Labor Law

HR 201: Labor Law Update On-Demand Web Seminar. CalChamber. 90 minutes. (800) 331-8877.

Paying Non-Exempt Employees Web Seminar. CalChamber. May 1. (800) 331-8877.

Pregnancy Disability Leave 201 Web Seminar. CalChamber. May 29. (800) 331-8877.

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Overview of June Ballot Propositions

Following are brief summaries of the measures that will appear on the June ballot and reasons for the California Chamber of Commerce positions.

The CalChamber encourages employers to share this information with their employees. Businesses are within their rights to do so — just remember: NO PAYCHECK STUFFERS, no

coercion, no rewarding or punishing employees (or threatening to do so) for their political activities or beliefs.

For more guidelines on political communications to employees, see the brochure at www.calchamber.com/guidelines. Note the distinction between *internal* communications (to employees, stockholders and their

families) and communications to *external* audiences (such as non-stockholder retirees, outside vendors, customers, passersby).

For more information on the ballot measures, see the link listed below or visit the website of the secretary of state at www.sos.ca.gov.

Proposition 98

Eminent Domain. Limits on Government Authority. Initiative Constitutional Amendment.

Bars state and local governments from taking or damaging private property for private uses. Prohibits rent control and similar measures. Eliminates deference to government in property rights cases. Changes condemnation rules.

Placed on Ballot by: Petition Signatures.

CalChamber Position: Oppose

Reason for Position:
Potentially constrains the state's ability

to address critical water infrastructure needs. The uncertainty over California's ability to develop any additional water supply outweighs any potential benefits.

For more information:
www.NoProp98.org.

Proposition 99

Eminent Domain. Limits on Government Acquisition of Owner-Occupied Residence. Initiative Constitutional Amendment.

Bars state and local governments from using eminent domain to acquire an owner-occupied residence for conveyance to a private person or business entity. Creates exceptions for public works, public health and safety, and crime prevention.

Placed on Ballot by: Petition Signatures.

**CalChamber Position:
No Position**

The California Chamber of Commerce Board of Directors did not take a position

on Proposition 99 because the initiative applies only to owner-occupied residences.

Ballot Information • Voter Registration

Register by May 19 to vote in June 3 Primary

www.sos.ca.gov

CalChamber Supports Bipartisan ADA Proposal

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not meet the ADA-required measurements and has collected millions from California small businesses in settlements.

Current disability access requirements, established by the federal Americans with Disabilities Act (ADA) and state laws, can be highly technical. Interpretation can be subjective. Also, new construction is being approved by private and public sector entities involved in the building process, yet still is not fully compliant.

SB 1608 sets up a process to encourage business owners to be proactive in complying and to obtain the assistance of state-certified access specialists to determine whether buildings comply.

"Businesses have both a vested interest and responsibility to comply with disability access laws," said CalChamber Policy Advocate Kyla Christoffersen. "At the same time, California's laws should facilitate and acknowledge the efforts of businesses who desire to comply and take steps accordingly. SB 1608 strikes a fair and reasonable balance."

Promoting Compliance

SB 1608 promotes compliance with disability access requirements and addresses unwarranted litigation through:

- **California Disability Access**



Tom Harman



Darrell Steinberg



George Runner



Ron Calderon

Commission: Creates an independent state commission on disability access in the state of California that will serve as an advisory body and information center on disability access issues. The commission would include legislators and representatives of the disability community, building professions and building owners.

- **Increased Education and Awareness:** Establishes minimum continuing education requirements for building inspectors and architects on disability access laws. In addition, demands for money issued by attorneys under the disability access laws must be accompanied by an advisory statement available in multiple languages explaining building owner/tenant obligations under the disability access laws, as well as legal options.

- **Promotes Use of State-Certified Disability Access Specialists:** Encourages owners of existing buildings to voluntarily use state-certified access specialists (CASps) to ensure compliance. It also requires that new construction

and new tenant improvements affecting access be inspected by building inspectors who also are CASps.

The CASp program was established by 2003 legislation and is overseen

by the Division of the State Architect.

- **Court Procedure Encouraging Compliance:** Establishes a court procedure available only for defendants who have demonstrated diligence in complying with disability access laws by hiring a CASp. Such defendants, if sued because of an alleged construction-related accessibility violation, may request a temporary stay to litigation and a conference in which the judge and the parties must meet early to evaluate the case, including the alleged violations and whether resolution is possible.

Action Needed

SB 1608 is set for hearing April 28 in the Senate Business, Professions and Economic Development Committee and on April 29 in the Senate Judiciary Committee. Contact your senator and members of both committees and urge them to **support SB 1608**.

For a sample letter, visit www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

Failure to Return from Leave Not Necessarily Job Abandonment

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situations may require reasonable accommodation and additional time off work.

Once an employer has gone beyond the pregnancy disability leave and the California Family Rights Act, additional information would need to be obtained to see whether the employee would be entitled to additional protection under other laws.

Employee Rights

Job abandonment may be considered when someone has been told to return to

work and they are no longer in a protected status and they do not show up for work after being notified. It is risky to form that conclusion though without going through the process of reviewing what rights the employee may have and what has been going on in terms of the employee's medical condition.

Before terminating someone for job abandonment, you would want to review the communication that was sent to the employee, whether she received your communication and whether she had any

other reason for not reporting to work as scheduled. You may also want to consult with your legal counsel before ending her employment to determine if there is additional protection that may apply.

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.

California Enterprise Zone Program Positive, Effective State Policy

The enterprise zone (EZ) program continues to serve as a productive tool to stimulate the California economy, applying broadly to companies of all sizes and from virtually all industries.

The program offers a variety of tax credits and incentives to encourage businesses to locate, invest and create jobs and environmentally friendly operations in economically distressed communities.

Established by California Chamber of Commerce-supported legislation signed in 1984, the EZ program is one of the few remaining statewide tax incentives that can be used for local economic development.

Current law allows for 42 enterprise zones. Communities apply for and receive EZ designations from the state through a competitive process.

"California's EZ program not only breathes economic life into distressed areas, but also helps California compete for jobs with other states and countries," said CalChamber Policy Advocate Kyla Christoffersen.

Studies Show Program Value

In recent years, the program has come under scrutiny due to controversy over the perceived cost of the program to the state. Several recent studies, however, have established the program's effectiveness.

For example, an August 2006 study commissioned by the California Housing and Community Development Department documented the success of enterprise zones in spurring economic recovery. From 1990 to 2000, compared to the rest of California, enterprise zones on average experienced:

- poverty rates 7.35 percent lower than the rest of the state;
- household incomes 7.1 percent higher;
- salary income 3.5 percent higher; and
- median rents 2.3 percent higher.

Another 2006 study from the University of California, Davis, described California's EZ program as "probably the most successful in the nation" — adding nearly 300,000 jobs to California from 1992-2002.

Program Goals

The program incentivizes businesses to partner with distressed communities through benefits including:

- **Hiring credits:** Companies can earn \$35,600 or more in state tax credits for each qualified employee (including

disadvantaged individuals) hired over a five-year period (up to \$11,700 during the first 12-month employment period).

- **Employee assistance:** A one-time individual credit of up to \$525.

● **Equipment credits:** Subchapter C corporations can earn sales tax credits on purchases of up to \$20 million (\$1 million for S corporations, partnerships and LLCs) per year for qualified machinery and machinery parts, including manufacturing, processing, research and development, and pollution control equipment used exclusively in an EZ.

- **Net operating loss carryforward:** Up to 100 percent for 15 years.

● **Tax deduction:** Lenders to EZ companies may receive an income tax deduction for EZ loans.

- **Preference points:** Available on state contracts for EZ companies.

Coalition Support

The CalChamber-led California Businesses for Enterprise Zones coalition will continue to promote improvements to the EZ program that will make it a more powerful local economic development tool to attract new businesses to California communities and encourage existing businesses to stay and expand within these communities.

Staff Contact: Kyla Christoffersen

More information:
calchamber.com/ez

New Attempt to Roll Back Workers' Comp Reforms Moving

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manent disability rates, and litigation that preyed on this subjectivity compounded the situation.

Data-Driven Approach

The CalChamber believes California should take a data-driven approach to reviewing the available information before considering a permanent disability increase, let alone doubling benefits.

Measuring the adequacy of permanent disability ratings under the current system

by comparing them against the old system is irrational. The Division of Workers' Compensation is in the process of reviewing the relevant data and working through the policy issues involved. This process should be allowed to proceed down the path of data-driven revisions to the permanent disability rating system.

Key Vote

SB 1717 passed the Senate Labor and Industrial Relations Committee on April 23 on a vote of 3-1.

Ayes: Migden (D-San Francisco); Kuehl (D-Santa Monica); Padilla (D-Palo Alto).

No: Ackerman (R-Tustin).

Absent/abstaining/not voting: Wyland (R-Del Mar).

Action Needed

SB 1717 will be considered next by the Senate Appropriations Committee. Urge your senator and committee members to **oppose SB 1717**.

Staff Contact: Jason Schmelzer

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.

Bill Blocking Retroactive Hotel Taxes Passes



SUPPORT

California Chamber of Commerce-**supported** legislation prohibiting retroactive application of hotel occupancy taxes won approval this week from an Assembly committee.

AB 2676 (Charles Calderon; D-Montebello) aims to stop local taxing authorities from imposing new tax liabilities retroactively.

Virtually every city and county in the state has enacted a tax on transient occupancy of hotels. In recent years, however, many local jurisdictions have interpreted their ordinances to apply the tax to many items and transactions above what guests pay for their room — for example, parking.

Often, when the new tax is imposed on transactions beyond the cost of the room,

the new tax liability is being imposed retroactively. This retroactive application of the new tax violates the state Constitution and state law.

Key Vote

The Assembly Revenue and Taxation Committee approved AB 2676 on April 21 on a vote of 7-0 with two committee members not voting.

Ayes: Charles Calderon (D-Montebello), DeVore (R-Irvine), Arambula (D-Fresno), Eng (D-Monterey Park), Feuer (D-Los Angeles), Hayashi (D-Castro Valley), Plescia (R-La Jolla).

Absent/abstaining/not voting: Ma (D-San Francisco), Spitzer (R-Orange).

Staff Contact: Kyla Christoffersen

CalChamber-Opposed Bills Raising Building Costs Held in Assembly Committee



OPPOSE

Two California Chamber of Commerce-**opposed** bills that will drive up the costs of building commercial and residential properties in California were placed on the Assembly Appropriations Committee suspense file on April 23, pending review of the bills' fiscal impact.

● **AB 2030 (Lieu; D-Torrance)** substantially increases the cost of development in California by mandating unrealistic energy efficiency standards for all new commercial buildings without taking into account the additional costs that must be absorbed by developers and consumers.

● **AB 2112 (Saldana; D-San Diego)** substantially increases the cost of housing and development in California by mandating unrealistic energy efficiency standards for all new residential buildings without taking into account the additional costs that must be absorbed by developers and consumers.

Both AB 2030 and AB 2112 mandate that beginning in 2030, both new residential and non-residential buildings generate at least 50 percent of their power from on-site sources. Although the CalChamber supports cost-effective increases in energy efficiency and conservation goals, these bills are not effective

ways to accomplish either goal.

AB 2030 has significant and devastating consequences on California's construction sector. It also could act as a de facto moratorium on new commercial construction and mixed-use projects in redevelopment zones, and push patterns of development further into the rural edge of suburbs.

The CalChamber is very concerned about the impact AB 2112 will have on housing affordability, especially during this time of a down market. Mandating that a home generate 50 percent of its own power will drastically increase the cost of a new home and will hit hardest those who can least afford to purchase a home.

Action Needed

Both AB 2030 and AB 2112 will be reviewed by Assembly Appropriations at the committee's next hearing and may be voted off the suspense file and sent to the full Assembly for a vote.

Contact your Assembly representative and members of Assembly Appropriations and urge them to **oppose AB 2030 and AB 2112**.

Staff Contact: John Hooper

Free Trade Agreement Helps Spur California Exports to Australia

A recent visit to the California Chamber of Commerce from the Australian Consul General provided an opportunity to review the success of the U.S.-Australia Free Trade Agreement.

The U.S.-Australia agreement went into effect on January 1, 2005. Between 2004 and 2007, U.S. exports to Australia increased 35 percent, reaching \$19.2 billion.

California exports to Australia rose 25 percent in the same period, topping \$2.8 billion in 2007. Australia is California's 12th largest trading partner. California is the largest state exporter to Australia.

Earlier this month, the United States and Australia entered into an "open skies" agreement that opened up air travel along several protected routes between the two nations.

For more information, visit www.calchamber.com/international.



The success of the U.S.-Australia Free Trade Agreement is among the topics of discussion in a meeting between Australian Consul General Innes Willox and Susanne T. Stirling, CalChamber vice president of international affairs.

Workforce Wellness Task Force Seeks Fit Business Award Applicants



The California Chamber of Commerce is urging its members to apply for the 2008 California Fit Business Awards.

The annual awards program, launched by the California Task Force on Youth and Workplace Wellness, began in 2003 with public, private and non-profit companies across California seeking to recognize innovations for healthier workplace environments.

Applicants will have an opportunity to share business models that promote

healthy workplaces as part of the state's overall solution to curbing what the state Department of Health Services estimates as \$28 billion a year in lost productivity, workers' compensation and medical costs associated with obesity issues in working adults.

Currently, more than 51 percent of adults in California are overweight or obese — one of the fastest rates of increase in obesity in the nation.

In 2007, 29 CalChamber members were among more than 80 California companies recognized by the task force for exemplary work in applying innovative workplace wellness policies and programs.

Among the innovations implemented

by last year's award winners were:

- health food options in the cafeteria, vending machines and at meetings;
- nutrition education, on-site fitness evaluations and free fitness classes;
- physical activity breaks; and
- reimbursement for wellness and fitness-related services such as gym memberships.

The Fit Business Awards seek to increase awareness among employers throughout the state by promoting the connection of employee health to the financial bottom line.

For more information and to download an application, visit the task force website at www.wellnesstaskforce.org. Applications must be postmarked before June 16.

They won't know unless you tell them. Write your legislator.

calchambervotes.com

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