

ALERT

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Downturn in Economy Worsens State Budget Crisis

The release of the May revision to the Governor's state budget proposal showed the economic downturn has made it necessary for the administration to propose additional measures to deal with deficit projections.

The May budget revision traditionally follows the April tax receipts so that the administration can reforecast expected income.

"As everyone knows, we are facing an extremely difficult budget year," Governor Arnold Schwarzenegger said in releasing his revised budget plan for 2008-09 this week. "We had to get creative and find new revenues without raising taxes."

At the news conference to release his proposal, Governor Schwarzenegger pointed out that California's structural budget deficit persists. Slower rates of economic growth, softening state revenues and increased costs have widened California's budget gap.

In January, the projected deficit for 2008-09 was \$14.5 billion. Left unaddressed, the administration predicted, the projected gap would have grown to \$24.3 billion based on updated revenue projections, revised caseload estimates and higher costs.

Combination Approach

Governor Schwarzenegger's 2008-09 budget includes a combination of some cuts, some new revenues and some creative solutions to address California's \$17.2 billion budget problem and provides a reserve of \$2 billion.

It proposes \$12.6 billion in expenditure reductions across state government. While it retains the vast

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CalChamber President Comments on Budget

California Chamber of Commerce President Allan Zarembeg responded to the budget proposal as follows:

"California's budget crisis is the result of two problems: (1) spending one-time excess revenues for ongoing programs in the early part of this decade; and (2) a downturn in revenues as a result of the current economic slowdown.

"Therefore, solutions consistent with the problems require the state to bring its ongoing expenditures in line with projected ongoing revenues and to find temporary revenues until the inevitable economic recovery restores state revenues to their historic levels.

"The Governor correctly provides that taxes should be a last resort. Consumers and businesses can least afford tax increases in an economic slowdown and in the midst of rising energy and food costs. It is only through a strong economic recovery that the state will have the revenues to fund necessary government services.

"If the state, however, does not in the future set aside one-time excess revenues for inevitable downturns in the economy, it will perpetuate the cycle of deficit spending that will put pressure on California taxpayers for inappropriate tax increases."

State Activates Heat Illness Prevention Network Again

As temperatures reach triple digits, the California Chamber of Commerce is urging employers to take precautions and be aware of the signs of heat illness in their employees.

In response to forecasts of hotter weather, California's Division of Occupational Safety and Health (Cal/OSHA) has activated the Heat Illness Prevention Network, launched last year by the CalChamber and other business groups, in cooperation with Cal/OSHA, to warn employers about impending heat emergencies.

As part of the prevention network, employers are encouraged to allow workers to assimilate to the heat and take other heat illness prevention measures, such as providing ample water, cool areas for rest breaks when needed, emergency procedures in case a worker gets sick, and training for all employees on recognizing and responding to heat illness.

Cal/OSHA notes that the first heat wave of the year poses a special threat because workers aren't accustomed to the high temperatures.

Heat Illness

Heat illness occurs when the body's temperature control system is unable to maintain an acceptable temperature. Under normal circumstances, the body cools itself by sweating. When high

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Labor Law Corner

Factors to Consider in Setting Time Between Employee Work Shifts



Barbara Wilber
Labor Law Consultant

Is there any requirement that employees have a certain amount of time between work shifts? May we schedule an employee for an eight-hour shift ending at 11 p.m. and then have the employee return to work at 7 a.m. the next day? How does it affect overtime?

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With the exception of certain employees in the airline, railroad, trucking, mining and health care industries, there are no federal or state restrictions upon the number of hours an employee must be off duty between workdays or shifts.

It is fairly common for employers to require employees to return to work before their next regularly scheduled shift or even to work a double shift with no time between the shifts.

Overtime

Whether overtime is due depends upon how the work falls within the employer's designated 24-hour workday beginning at the same time each calendar day.

In the example given in the question, assume a workday starting and ending at 12 midnight. Although there are only eight hours between shifts, the work occurs in two different workdays, so overtime is not due unless the employee starts work at 7 a.m. and works beyond eight hours in that new workday.

The result is different if an employer has designated a workday that begins at 3 p.m. on one day, and ends at 3 p.m. the next day.

Assume the employee worked eight hours from 3 p.m. to 11 p.m., and returned to work at 7 a.m. to again work eight hours. When the employee returns to work at 7 a.m., the hours are being worked within the same workday that began at 3 p.m. the day before. Overtime would then run from 7 a.m. to 11 a.m., and double-time would be owed thereafter.

Split Shift

A return to work within the same workday may trigger split shift and reporting time pay issues. Most Industrial Welfare Commission (IWC) orders define a split shift as a work schedule that is interrupted by non-paid, non-working periods other than bona fide rest or meal periods.

One hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday. However, any amount the employee earns above minimum wage can be used to offset the split shift requirement.

The CalChamber website provides a chart that explains the formula for this offset.

In addition, with certain exemptions found in the IWC order, if the employee is not provided at least two hours of work on the second reporting, reporting time pay may apply.

To assure compliance, review the complete split shift and reporting time pay regulations.

Safety Considerations

Sometimes compliance with the law is not the only consideration. Safety considerations may be a factor when requiring an employee to return to work with limited time between shifts. Such a practice may affect the competency of employees and increase the accident rate.

To mitigate these safety concerns, companies may implement a policy requiring a minimum time between work shifts except in emergencies.

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 Calendar

California Business Legislative Summit:
May 20-21, Sacramento
Council for International Trade:
May 20, Sacramento
Water Committee:
May 20, Sacramento
Board of Directors:
May 20-21, Sacramento
CalChamber Fundraising Committee:
May 21, Sacramento
AB 32 Climate Change Policy Committee:
May 21, Sacramento
Transportation Committee:
May 21, Sacramento

Survey Finds Californians Distressed About Schools, Want Accountability

Californians place education at the top of public policy concerns, along with the economy and jobs, according to a survey released this week by California Business for Education Excellence Foundation (CBEE).

The statewide survey, conducted earlier this year, also found that Californians believe schools are getting worse, not better, by a 54 percent to 33 percent margin. Most believe the problems in the state's education system are due to a lack of accountability, rather than a lack of funding, CBEE reported.

Problems Facing Schools

Voters identified the most serious problems facing the schools as:

- Too many students not performing at grade level (75 percent).
- Too much money being spent on bureaucracy and administration (70 percent).

"These survey results finally answer the chicken and egg question: Which comes first: accountability or more money? This is another wake-up call to education leaders and state policymakers that the main problem with our schools is not money but the lack of accountability," said James S. Lanich, CBEE Foundation president. "California already spends \$67 billion a year on education, yet our students are not prepared for academic success."

Achievement Gap/Testing

The survey also found Californians are keenly aware of an "achievement gap" between students of different ethnicities and economic backgrounds:

- 74 percent of voters see the achievement gap as a serious problem that must be addressed.
- Voters are optimistic, however, that high poverty schools with large minority populations can close the achievement gap.

Californians want clear-cut ways to evaluate the success or failure of schools, and they want parents to have more information available to them about school performance.

In this regard, voters see testing as a valuable tool in evaluating the



performance of students, teachers and schools:

- 75 percent of voters believe that student testing is extremely, or very important in giving students and parents information about how well teachers and schools are doing.
- 76 percent agree that testing is extremely, or very important in holding students and parents accountable.

Recommendations

Voters strongly support a number of recommendations for improving K-12 public education in California, according to the survey:

- 74 percent strongly support setting expectations for all schools to get all students to attain a minimum of grade-level proficiency each year in reading, writing and mathematics.
- 72 percent strongly support making school performance data, such as overall student assessment test scores and grade level performance, available and understandable to the public, so parents can better understand what is happening within schools.
- 68 percent strongly support giving parents clear options for when their local school is chronically low-performing, including easy-to-access tutoring services for their children, transfers to another school, and charter school options.

"This data confirms that parents miss the one measurement that matters the most: Is my child attaining grade-level proficiency in reading, writing, math and science? Whether or not the student is at grade level in these subjects will determine whether he or she will ever be ready for college or ready for work — or if he or she will even survive school without dropping out. Yet this type of clear, straightforward information is not readily available for the parents," Lanich said.

Methodology

This statewide telephone survey of 1,000 registered voters was conducted from February 4-10 by the national research firm Greenberg Quinlan Rosner Research Inc. The margin of error is +/- 3.1 percent at the 95 percent confidence level.

This study was made possible by the support of the William and Flora Hewlett Foundation and the Bill and Melinda Gates Foundation.

CBEE Foundation

CBEE Foundation is a non-profit, non-partisan foundation whose mission is to raise student academic achievement and close achievement gaps in California's public schools. This is done by providing a voice to high-performing schools so that all schools can replicate their best practices and get all students to a minimum of grade-level proficiency every year.

More information on CBEE can be found at www.cbefoundation.org.



James S. Lanich, president of California Business for Education Excellence Foundation, discusses business concerns about education at a recent gathering in Sacramento.

Assembly Swears in Bass as New Speaker; Majority Leader Named



Assembly Speaker Karen Bass

Assemblywoman Karen Bass (D-Los Angeles) was sworn in as the 67th Speaker of the California Assembly on May 13, making her the first African American woman to hold this leadership position.

Bass was elected to the Assembly in 2004 and has been a part of the leadership since her first term when she was appointed majority whip.

In her second term, she was elevated to the post of majority floor leader, making her the first woman to hold the post and the second African American to serve in the position.

Background

As the Assembly representative for the 47th District, Bass serves the cities and communities of Culver City, West Los Angeles, Westwood, Cheviot Hills, Leimert Park, Baldwin Hills, Windsor Hills, Ladera Heights, the Crenshaw District, Little Ethiopia and portions of Korea Town and South Los Angeles.

Bass is the second consecutive Assembly member from the 47th District to become Speaker, as her predecessor in the 47th District seat, former Assemblyman Herb Wesson (D-Los Angeles), was Assemblyman Fabian Núñez's (D-Los Angeles) predecessor as Speaker.

Governor Schwarzenegger has signed 17 of Bass' bills into law. Those bills focus on foster care reform; healthy families insurance coverage to help prevent children from going without health insurance; a small business policy that removes red tape by preventing businesses from filling out duplicate certification forms for the city and state; and a measure that expands the Baldwin Hills Conservancy.

Bass also has secured more than \$2.3 million to help revitalize the historic Vision Theater in Los Angeles; and more

than \$600 million for Los Angeles Unified School District.

Before she began her political career, Bass founded and ran Community Coalition. As executive director, she built a community-based social justice organization in South Los Angeles to empower residents to get involved in making a difference. Today, the organization is considered a model throughout the country on how to engage the community.

New Majority Leader

Assemblyman Alberto Torrico (D-Newark) was named as the new Assembly majority leader.

He represents the 20th Assembly District, which includes Fremont, Newark, Union City and Milpitas, among other cities in the East Bay.

Assemblyman Torrico serves in both the Hispanic Caucus, as his father is from Bolivia, and the Asian Pacific Island Caucus, as his mother is Japanese. This makes him the first California Assembly member to serve in two ethnic caucuses.

He currently sits on the Assembly Banking, Business, Social Security and Joint Audit committees. Torrico currently chairs the Assembly Governmental Organization Committee.

State Activates Heat Illness Prevention Network Again

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temperatures and humidity prevent the body from releasing heat efficiently, however, a person's body temperature can rise quickly, causing numerous symptoms.

If left untreated, high body temperatures can damage the brain and other vital organs and, ultimately, lead to death.

Cal/OSHA has regulations in place to protect outdoor employees from the effects of heat exposure and mandated training requirements for employees and supervisors on the prevention, symptoms and treatment of heat illness. The regulations apply to all companies with employees working in outdoor places of employment.

In addition to the training, employers must provide potable drinking water, access to shade and compile heat illness prevention procedures, including

employee training, in writing.

Indoor workplaces also can pose a risk for heat illness, especially in times of triple-digit temperatures outside, so all employers are urged to be vigilant in taking steps to prepare for and avoid heat illness, including employee training.

Awareness Training

The CalChamber's *Heat Illness Prevention in California* mini-book complies with the Cal/OSHA training requirements and is full of clear, medically accurate illustrations, as well as plain-language, bilingual content for easy reader comprehension.



The Heat Illness Prevention in California mini-book was prepared with input from Cal/OSHA, which labels it a valuable resource and compliance tool for outdoor workers and supervisors.

More Information

For more information or to purchase the *Heat Illness Prevention in California* mini-book or the *Heat Illness Safety and Prevention* poster, visit www.calbizcentral.com

and select the health and safety product category.

For more information on heat illness, visit the Cal/OSHA website at www.dir.ca.gov/dosh. To join the Heat Illness Prevention Network, which is managed by Cal/OSHA, e-mail communications@dir.ca.gov.

CalChamber in Court

CalChamber Joins Lawsuit to Protect Federal Oversight of Health Care Plans



The California Chamber of Commerce has filed a “friend of the court” brief urging the 9th Circuit Court of Appeal to uphold a district court decision finding the San Francisco Health Care Security Ordinance is

pre-empted by federal law.

In the case of the *Golden Gate Restaurant Association v. City and County of San Francisco*, the CalChamber argues that the San Francisco ordinance violates the most basic purpose of the federal Employee Retirement Income Security Act of 1974 (ERISA) — encouraging the formation of employer-sponsored health benefit plans by establishing a uniform federal body of law governing the provision of employee benefits.

Impact on Employers

If the district court’s decision is reversed by the circuit court, many California employers will be forced to comply with the ordinance as it ostensibly requires group health plan expenditures for any employee who works 10 or more hours per week in San Francisco during any calendar quarter.

The ordinance will establish a template for jurisdiction-by-jurisdiction regulation of employer-sponsored health plans. As a result, many group health plans will become subject to a hodge-podge of conflicting state and local mandates.

Allowing local government entities to impose mandates on employers for health plan coverage will, no doubt, result in some employers withdrawing their business and jobs from these areas, the CalChamber argued in its brief.

Federal Law Should Prevail

The CalChamber said the ordinance is pre-empted by ERISA because it regulates ERISA plans in at least four ways:

- Virtually all covered employers will have to expand the roster of employees eligible for their ERISA-regulated health plan benefits in order to comply with the ordinance.
- The ordinance has a direct impact on funding and the operation of ERISA health plans as it requires covered employers to provide health plans benefits at a specified rate or pay the difference on behalf of the employee to a city-operated health plan.

● Onerous new rules for health plan administration are enforced by the ordinance’s penalty-laden recordkeeping and reporting requirements.

● The ordinance creates ERISA plans where none existed before.

CalChamber Summation

The CalChamber concluded its brief by stating that the ordinance impermissibly mandates that ERISA-regulated health plans provide new health plan benefits to additional beneficiaries. It interferes with the administration of ERISA-regulated health plans and is enforced by its own rules and penalties.

As the district court recognized, ERISA was enacted to ensure that employers who choose to offer welfare benefits to their employees will be subject only to uniform federal regulation.

Allowing the ordinance to stand would run afoul of the express words of the ERISA statute and more than three decades of Supreme Court opinions preserving ERISA pre-emption, the CalChamber concluded.

Oral arguments in this case were heard on April 17.

Staff Contact: Erika Frank

Truck/Bus Replacement Rule Coalition Seeking Members



The California Chamber of Commerce is urging members of the business

community to join its coalition designed to reduce the negative impacts of the upcoming California Air Resources Board (CARB) truck and bus replacement rule.

CARB is working on a regulation that could affect more than 1.5 million diesel trucks and buses in California.

The first action under the new proposed rule will require any heavy-duty vehicle with a pre-1994 engine to be replaced or retrofitted with yet-to-be-developed technologies by December 31, 2010. All other trucks with an engine-model year up to 2009 will be required to be replaced on a tiered schedule ending in 2022.

The proposed regulation would apply to diesel shuttle buses and vehicles greater than 14,000 pounds Gross Vehicle Weight Rating. This could result in significant financial burdens to California businesses that will be forced to replace their truck fleet in the coming years.

The CalChamber hopes business leaders will join the Driving Toward a Cleaner California coalition today to find out what can be done to make sure CARB strikes the right balance between protecting the environment and the economy.

Workshops

CARB workshops on the new rule (both daytime and evening) are scheduled from May 21 through June 10.

For more information, visit www.drivecleanca.org or use the link at www.calchamber.com.

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majority of 10 percent across-the-board reductions proposed in January, the revised budget makes some adjustments to address the larger deficit while protecting education and public safety.

The revision fully funds the Proposition 98 education guarantee and provides a modest increase in total funding for education in the budget year. The proposal also includes funds to keep all of the state's parks open, increasing fees where feasible to offset General Fund costs.

Budget Reform

In addition to the proposed Budget Stabilization Act, Governor Schwarzenegger said he will issue an executive order to establish a bipartisan commission of legislative and gubernatorial appointees to modernize the state's tax laws and better reflect the current economy.

The Tax Modernization Commission will be charged with recommending ways to stabilize California's revenues, bring the state's tax system into better alignment with a modern economy and to improve the state's economic competitiveness.

California Lottery

Describing the California Lottery as an "underperforming" state asset, the Governor called for modernizing the Lottery to boost performance and returns. The budget plan reports per capita average sales from the Lottery are far below those of other states. With the modernization, Lottery performance will improve and the state will be able to raise cash upfront by selling future lottery revenues with no risk to the state, the administration states.

This cash, estimated at \$5 billion in 2008-09 and \$15 billion overall through 2011, will in turn be used to establish a rainy-day fund. The news release from the Governor's office notes: "Establishing a rainy-day fund is the long-term solution that will get California off the broken budget roller coaster ride once and for all. It's this rainy-day fund that will protect all of California's priorities, so that the state is never again subjected to the feast-or-famine budget cycle that threatens funding to education, law enforcement, human services and other programs."

Calculating California Budget Gap

Governor's Budget Proposal (January)	\$14.5 billion
Projected Revenue Decline (May)	\$6.0 billion
Budget Reserve (May)	\$2.0 billion
Increased Expenses (May)	\$1.8 billion
Total Estimated Budget Gap (May)	\$24.3 billion

Source: Governor's Budget May Revision 2008-09

Governor's Proposal to Close Budget Gap

Special Session Actions	\$7.0 billion
Lottery Proposal	\$5.1 billion
January Proposed Solutions	\$9.3 billion
Additional Solutions (May)	\$2.9 billion
Total Proposed Solutions	\$24.3 billion

Source: Governor's Budget May Revision 2008-09

The Lottery proposal is to be submitted to voters for approval in November.

To ensure the rainy-day fund will contain sufficient funds, the Governor proposed a backup plan if voters do not approve his Lottery proposal or revenues fall short of projections — a one-time trigger to temporarily increase the state sales tax by 1 percent. He said

the proposal is similar to a mechanism signed by Governor George Deukmejian in 1983, and will result in rebates to taxpayers when the economy recovers and the rainy-day fund is full.

More Information

More information on the May revision to the Governor's budget is available at <http://gov.ca.gov/may-revise>.

CalChamber-Sponsored Seminars/Trade Shows

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

Business Resources

Food Recalls: Putting the Pieces Together. California Department of Public Health. June 6. (916) 650-6595.

International Trade

Germany California Solar Day. German American Chamber of Commerce Inc., California Branch. May 27, San Francisco. (415) 248-1245.

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

New CalBizCentral Booklets Detail Employment Laws, Reduce Legal Risk

A new five-booklet series designed to help educate managers about employment law and keep their companies out of court is being offered by CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.



The mini-books are designed to make it easy to train managers, comply with employment law and reduce legal risk.

Legal Risk

“It’s not enough to have legally compliant policies — without a training program, businesses can still be sued,” said Jessica Hawthorne, employment attorney for the CalChamber.

“Courts have consistently found that printed policies without follow-up training can demonstrate that the company shows disregard for whether the law is followed or not,” she said.

“This series of booklets — *What Every Manager Needs to Know About* — is de-

signed to help businesses of all sizes train managers on state and federal employee law and avoid costly lawsuits.”

A 2005 Chubb Private Company Risk Survey revealed that in the last five years, 35 percent of private companies have had an employment law case or complaint filed against them.

Court records show that plaintiffs win nearly 70 percent of the time, with awards averaging \$170,000.

The CalChamber has assembled top business and legal experts in California to make CalBizCentral’s *What Every Manager Needs to Know About* series a valuable resource for California businesses, and especially for non-HR managers.

Topics

The five booklets that make up the series cover topics such as:

- **Hiring Employees**, including detailed questions managers should, and should not, ask.
- **Evaluating Employees**, including monitoring performance and knowing what to say.
- **Disciplining Employees**, including techniques and standing your ground.
- **Paying Non-Exempt Employees**, including meal, rest breaks, travel and time off.
- **Terminating Employees**, including

working with unions and knowing who to terminate.

“We developed the series as an easy guide for anyone involved in supervising employees, whether you are a small business owner or a manager at a larger corporation,” Hawthorne said.

“Small businesses generally don’t have the capacity to have human resource and legal staffs and can use the series as easy guides. For larger companies, these booklets integrate into existing policies and are easy for managers to use so that all managers understand their responsibilities,” she said.

All five of the small, paperback booklets — retailing at \$25 for the set — feature chapters on a myriad of topics and include pages where supervisors can add their own personal notes. Each booklet also contains frequently asked questions that managers are likely to receive from employees.

“The booklets will help managers manage employees in compliance with state and federal laws and avoid potentially costly litigation,” said Hawthorne. “With better-managed employees, comes improved employee morale.”

The *What Every Manager Needs to Know About* series is available at www.calbizcentral.com or by calling (800) 331-8877.

CalChamber Small Business Committee Needs You!

The California Chamber of Commerce is encouraging members with an interest in the state’s future and the well-being of their business to get involved and join the CalChamber Small Business Committee.

The Small Business Committee represents the small business perspective on priority legislation across various issue areas in cooperation with other standing committees of the CalChamber. It also promotes legislative action on key issues through the grassroots network of local chambers and small businesses.

The principles that guide CalChamber policy advocates grow out of work of the member volunteers on CalChamber standing and ad hoc committees.

In presenting the business perspective to state policymakers, the CalChamber relies on members to tell us about the real world impact of legislative and regulatory proposals.

Each committee focuses on a subject (or related subjects) of concern to business. Other CalChamber policy committees cover issues such as health care policy, labor and employment, international trade, labor reform and protection, taxation, trans-

portation, infrastructure and workers’ compensation.

When issues arise that fall outside the realm of standing committees, the CalChamber forms ad hoc groups to review and recommend policies in the new area.

Take your career to the next level. Have an impact on public policy. Fresh outlook needed; no experience required!

To join the Small Business Committee, contact Marti Fisher at (916) 444-6670 or submit an online form at www.calchamber.com/getinvolved.

How can you make processing a PDL request joyful, not stressful? Let our experts show you.

Attend **Pregnancy Disability Leave 201 Live Web Seminar** to get an in-depth review of PDL requirements and their interaction with State Disability Insurance and Paid Family Leave. This advanced-level, 90-minute event is ideal for employers with fewer than 50 employees or those with more than 50 who have employees not eligible for FMLA/CFRA.

Expert guidance on such topics as:

- Defining the legal requirements mandatory when providing leave.
- Determining employee eligibility.
- Explaining wage replacement.
- Details on benefits available.
- How to administer requests for leave and return to work.

Pregnancy Disability Leave 201 Live Web Seminar

Thursday, May 29
10 a.m. (PST)

Registration starts at \$120



To register, visit www.calbizcentral.com/pdl201 or call (800) 331-8877.



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