

ALERT

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CalChamber Urges Halt to New Tax Proposals

Opposes Withholding for Independent Contractors



As *Alert* went to press, the California Legislature was expected to vote soon on a Democratic-backed budget proposal that includes several billion dollars

in new taxes, including targeted tax hikes, a new requirement for business and government to withhold taxes on payments to independent contractors and an Internet tax.

The California Chamber of Commerce is urging members to ask their legislators to say “no” to new taxes on top of the billions of additional dollars employers are already paying due to the budget agreements adopted last year and earlier this year.

The budget conference committee, made up of members from the Senate and Assembly, adopted the tax hikes on a 3-2 party-line vote June 16, with Democrats voting “yes” and the Republicans voting “no.”

On June 17, Governor Arnold Schwarzenegger said he won’t sign a budget that has tax increases in it. “It would be irresponsible after the largest tax increase in California’s history just four months ago to go back to the people and to say we want to increase your taxes, but we want to protect the salaries of state workers,” the Governor said, referring to the conference committee’s refusal to

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Coalition Launches Radio Ads Against Higher Taxes: Page 5

Targeted Tax Bill Threatens to Erode Health Care Coverage



The California Chamber of Commerce has identified a new “job killer” bill that would make it more difficult for employers to afford

health coverage for their employees.

CalChamber-opposed **SB 227 (Alquist; D-Santa Clara)** increases health care premiums by establishing a new targeted tax and government bureaucracy to change California’s major risk medical insurance program (MRMIP).

The MRMIP provides major risk medical coverage to people who have been rejected for coverage by at least one private health plan. This bill would require a health plan to either accept for coverage at specified set rates those previously denied coverage, or pay a “fee.”

The “fee,” which the CalChamber has identified as a tax, would be adopted by a simple majority vote, even though the law requires a two-thirds majority vote by the Legislature to pass a tax.

Industry-Specific

SB 227 singles out a specific industry and its purchasers to pay for a broad-based public program to provide health

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Heat Illness Regulations: CalChamber Urges More Effective Enforcement of Existing Rules

More effective enforcement of existing California requirements to prevent heat illness in outdoor workers can do more to protect workers than adopting more prescriptive, burdensome rules, the California Chamber of Commerce said in public comments on emergency amendments to the standard.

CalChamber policy advocate Marti Fisher presented an employer perspective June 18 when the Cal/OSHA Standards Board met in Oakland to review several

emergency amendments to the state’s heat illness standard.

Ultimately, the board did not approve the emergency heat illness rules, but instead verbally directed the Cal/OSHA staff to return next month with a narrowly crafted revision to the rules to clarify how shade is provided. After dealing with shade—the portion of the current heat illness regulation for which citations are most often issued, according to Cal/OSHA

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Cal/OSHA Corner

New Rules Affect Injury/Illness Plans for Health Care Employers



Mel Davis
Cal/OSHA Consultant

Is California going to address the possibility of aerosol transmissible disease hazards?

Yes. The Cal/OSHA Standards Board unanimously adopted two new regulations on the topic on May 29: Section 5199 Aerosol Transmissible Diseases and 5199.1 Aerosol Transmissible Diseases-Zoonotics (for

exposure to infected animals or animal products—to be covered in a future *Cal/OSHA Corner*).

The codification of these regulations into Title 8 means employers are now required to ensure that their Injury and Illness Prevention Plans contain those items in the regulations that apply to their operations, and that their employees are trained in the appropriate procedures to address any potential employee exposures.

Aerosol Transmissible Diseases

Section 5199 will control aerosol transmissible disease hazards. Employees in health care and other high-risk environments face new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and potentially pandemic influenza strains, as well as long-standing or re-emerging threats, such as tuberculosis (TB) and pertussis.

This regulation will require employers in specific areas of the health care environment to implement common infection control measures to protect employees from those threats and to enable the employees to continue to provide health care and other critical services without unreasonably jeopardizing the employees' health.

The new regulations are based on established guidelines and practices. The purpose of this standard is to identify the affected industries, establish infection control measures that are necessary to protect employees and to provide Cal/OSHA with the authority to enforce these measures in accordance with its legislative mandate.

Who's Covered

The regulation is divided into 10 sections and the scope and application section lists nine classes of health care facilities, services or operations:

- hospitals;
- skilled nursing facilities;
- clinics, medical offices and other outpatient medical facilities;
- facilities where high-hazard procedures are performed;
- home health care;
- long-term health care facilities and hospices;

- medical outreach services;
- paramedic and emergency medical services, including these services when provided by firefighters and other emergency responders;
- medical transport.

The regulation further defines affected employees as those in facilities, services or operations that are designated to receive persons arriving from the scene of an uncontrolled release of hazardous substances involving biological agents defined within the hazard communication regulations.

In addition, police services can be affected when transporting or detaining persons reasonably anticipated to be cases or suspected cases of aerosol transmissible diseases, and police services provided in conjunction with health care or public health operations.

Any operation within the public service umbrella, such as communicable disease contact tracing or screening programs where it is reasonably anticipated that there are aerosol transmissible diseases shall also be treated within these regulations.

And lastly, the following facilities, services or operations that are identified as being at increased risk for transmission or aerosol transmissible disease infection: correctional facilities and other facilities that house inmates or detainees, homeless

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Heat Illness Regulations: CalChamber Urges More Effective Enforcement

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staff—the board will proceed to a regular but expedited rulemaking process to address other concerns with the rule.

Labor representatives agreed with the CalChamber that there is a lack of compliance with the existing regulation. Business groups, as well as the public safety managers association, agreed with the CalChamber's remarks.

California became the first state in the nation to adopt a comprehensive heat illness prevention standard for outdoor workers in July 2006. The regulations, implemented by the California Division of Occupational Safety and Health (Cal/OSHA), mandated training for employees and supervisors on heat illness prevention, symptoms and treatment. The regulations apply to all companies with employees working in outdoor places of employment.

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

Emergency Regulations

The emergency amendments that were the subject of the hearing included:



- changes to the provisions that govern when and how to provide shade, drinking water and employee training;
- adding tiered procedures to be followed when temperatures are above 85 and 95 degrees Fahrenheit;
- adding related requirements to implement measures to protect employees working outdoors; and
- eliminating the definition of “preventative recovery period.”

CalChamber Comments

During the comment period, Fisher pointed out that if employers are not complying with the current standard, more effective enforcement is warranted rather than more regulation.

She recommended that Cal/OSHA reactivate the Heat Illness Prevention Network (HIP Network), launched two

summers ago by the CalChamber and other business groups in cooperation with Cal/OSHA, to warn employers about impending heat emergencies.

Fisher also cited concerns about the creation of the “trigger temperatures,” noting that the tiered requirements for the two temperature levels would require businesses to not only take the temperature on a regular basis, but also to write it down and maintain documentation.

She explained that this creates a new liability and an additional burden for businesses. The proposal does not provide any alternative procedures to determine a trigger, such as using a forecast.

Heat Illness

Heat illness occurs when the body's temperature control system is unable to maintain an acceptable temperature. Normally, the body cools itself by sweating. However, when high temperatures and humidity prevent the body from releasing heat efficiently, a person's body temperature can rise quickly, causing numerous symptoms. Left untreated, high body temperatures can damage the brain and other vital organs and, ultimately, lead to death.

Staff Contact: Marti Fisher

New Rules Affect Injury/Illness Plans for Health Care Employers

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shelters and drug treatment programs.

Generally Accepted Guidelines

Section 5199 incorporates generally accepted guidelines for two categories: (1) those requiring droplet precautions, such as pertussis, diphtheria, mumps and meningococcal disease; and (2) those requiring airborne infection isolation, such as TB, SARS, smallpox and measles.

Because the predominant route of those diseases requiring droplet precautions is considered to be near field exposure (within one to two meters of the source) to droplets greater than 5 microns

in diameter, dedicated ventilation systems and the use of respiratory protection is not included by public health authorities such as the U.S. Centers for Disease Control and Prevention (CDC).

They recommend that patients in health care facilities, who are infectious with diseases that are spread primarily through inhalation of smaller pathogen-containing droplet nuclei, small particles or dusts, be provided with airborne infection isolation facilities.

Cal/OSHA has developed this regulation relying heavily on existing CDC and California Department of Public Health-published recommended procedures for airborne aerosol hazards.

Review Details

Due to the volume of the regulation and the supporting documentation, it is highly recommended that those affected or potentially affected log onto www.dir.ca.gov and review the adopted regulation to determine just what and how much will affect your operation, and what will be needed to come into compliance.

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 Urges Halt to New Tax Proposals



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approve a 5 percent salary cut for state employees.

Proposed New Taxes

The package adopted by the conference committee includes the following new revenues:

- A new tax only on oil produced in California, beginning October 1, estimated to raise \$830 million in the current fiscal year and \$1.1 billion annually in future fiscal years.
- Rolling back the net operating loss (NOL) reforms adopted in the earlier budget agreements to partially conform California to federal law. The ability of businesses and individuals to deduct NOL already has been suspended for two years (an estimated \$1.6 billion increase). Rolling back the reforms is estimated to raise \$850 million a year by 2014-15.
- A \$1.50 per pack increase in the cigarette tax (currently 87 cents per pack) beginning October 1, estimated to raise \$1 billion this year and \$1.2 billion next year. The revenue from the cigarette tax

is estimated to decrease by 3 percent a year in the future.

Independent Contractors

Also adopted was a proposal to impose withholding on payments to independent contractors beginning January 1, 2010. Businesses and government entities would be required to withhold 3 percent of payments to independent contractors for goods and services.

The new requirement is estimated to net more than \$1.9 billion for the state initially, increasing to more than \$2 billion annually as compliance increases in future years.

Internet Tax

The committee approved extending the sales tax “nexus”—requiring out-of-state sellers that pay commissions to California firms or residents for sales referrals (often through a website link) to collect sales tax on sales to California residents.

A similar CalChamber-opposed proposal failed to move out of an Assembly policy committee earlier this year. The CalChamber pointed out that the proposal harms California online marketplaces, web-service providers, and

websites of small businesses and non-profits by changing California’s sales tax law in a way that will encourage out-of-state retailers to instead do business with out-of-state counterparts.

Other Revenues

- Requiring back-up withholding of 7 percent for various non-wage payments;
- Requiring businesses that provide services to register with the state Board of Equalization and file annual use tax returns for purchases on which sales tax was not collected;
- Strengthening the definition of abusive tax shelters to discourage tax avoidance;
- Revoking licenses of occupational and professional licensees who are delinquent in their tax payments.

Action Needed

Contact your legislators and urge them to **oppose** new taxes. Remind them that California’s long-term fiscal health depends on a recovering economy.

A strong economic recovery will add billions of dollars to the state treasury without increasing taxes, but will occur only if the Governor and Legislature are committed to increasing the state’s competitiveness and ensuring that California is a welcome environment for creating jobs.

Staff Contact: Marc Burgat

CalChamber-Sponsored Seminars/Trade Shows

More at calchamber.com/events.

Business Resources

Virtual Energy Forum. U.S. Department of Energy. June 24–25, Online. (617) 938-6020.

Hetch Hetchy Valley Tour. Water Education Foundation. July 22–24, San Mateo. (916) 444-6240.

Russian River Tour. Water Education Foundation. August 6–7, Santa Rosa. (916) 444-6240.

Northern California Tour. Water Education Foundation. October 7–9, Sacramento. (916) 444-6240.

International Trade

State of the Sea Ports. Northern California World Trade Center. June 25, West Sacramento. (916) 319-4262.

Socially Responsible Investing Here and Abroad. Monterey Bay International Trade Association. June 26, Monterey. (831) 335-4780.

India Trade Conference. Port of Los Angeles, Southern California Edison, Quanta Consulting. June 26, Irwindale. (949) 480-9466.

Innovation: Tri-Valley and the World Economy. Livermore Chamber and U.S. Chamber. June 30, Livermore. (925) 447-1606.

Growing Modesto in a Global Economy. Modesto Chamber. July 1, Modesto. (209) 571-6480.

IPO in Taiwan Seminar. Taiwan Trade Center, San Francisco. July 21, Santa Clara. (408) 988-5018.

Partnering for Compliance. Partnerships International Inc. August 12–14, San Jose. (321) 952-2978.

Trade Mission to Vancouver, B.C. Sacramento Metro Chamber and Northern California World Trade Center. August 18–19, Vancouver, B.C. (916) 321-9144.

Employers Paying \$10+ Billion More in Tax Hikes from Previous Budget Deals

See story in June 12 *Alert* or see the story online at www.calchamber.com.



Federal Proposal Increases Taxes on U.S. Firms Doing Business Overseas



The California Chamber of Commerce is urging U.S. Senators Barbara Boxer and Dianne Feinstein to **oppose** a proposal to raise taxes on U.S. companies doing business overseas.

The Obama administration is proposing to repeal the ability of U.S. companies to defer paying tax on foreign income until those earnings have been paid. The repeal would hamper the global competitiveness of U.S. companies, impede economic growth and result in the loss of additional jobs.

U.S. Business at Disadvantage

The United States generally does not tax a worldwide U.S. company on the active foreign income of its separately incorporated foreign affiliates until those earnings have been paid, typically as a cash dividend to the parent company.

Because the parent company may delay payment of U.S. tax until it has received the foreign income as a divi-

dend, this method of taxation permits deferral of U.S. tax.

U.S. companies doing business overseas add \$2.5 trillion to the U.S. economy and support more than 20 million U.S. jobs, about one-fifth of the private workforce—with millions more jobs supported by small- and medium-sized suppliers.

Eliminating this deferral would add \$200 billion to the tax burden of affected companies, putting them at a competitive disadvantage against foreign competitors that don't have to pay or can defer taxes in their home countries.

This means that foreign-based competitors could reinvest more, expand faster and sell their products at lower prices than their U.S.-owned competitors. Over time, worldwide U.S. companies would be unable to profitably compete against foreign corporations, leading to reduced employment and lower wages for workers at U.S. companies.

Maintaining Competitive Edge

The CalChamber supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of

disincentives that impede the international competitiveness of California business.

As many of the world's major economies take steps to enhance the ability of their companies to grow, this proposed new U.S. international tax policy threatens to unfairly harm U.S. companies and make U.S. workers less secure.

The phrase "ensuring America's competitive edge in the global marketplace" are on the lips of many federal policy makers, media members, business owners and workers these days.

With the California economy showing increased signs of weakness, the CalChamber believes that all parties need to work together to spur economic growth and protecting jobs is critical—especially as it pertains to the global marketplace.

Action Needed

The CalChamber has urged members of the California congressional delegation to **oppose** the tax increase on overseas income and is encouraging CalChamber members to do the same.

A sample letter is available at www.calchamber.com/international.
Staff Contacts: Susanne Stirling and Kyla Christoffersen

CalChamber-Led Coalition Launches Radio Ads Against Higher Taxes

With hard-working Californians already struggling with \$12.56 billion in new taxes in 2009, Californians Against Higher Taxes launched a campaign on June 18 to tell lawmakers that more taxes won't solve the state budget crisis—they will only hurt California families, cost jobs and stifle the economic recovery.

The radio ad began airing as Californians are confronted with an avalanche of proposals for higher taxes.

No New Taxes

Just one month after California voters said no to more taxes, coalition members—which include taxpayer groups, small businesses and many of California's largest employers—say that these new tax increases are the worst idea at the worst possible time.

"Legislators should be encouraging California businesses to grow and create more jobs, not enacting new taxes," said CalChamber President Allan Zaremborg, chairman of Californians Against Higher Taxes. "The state unemployment rate is a staggering 11 percent and expected to rise while the Small Business and Entrepreneurship Council ranks California second to last in the U.S. based on its 'policy environment for entrepreneurship.' New and higher taxes will kill jobs."

With billions of dollars in new taxes already straining family budgets throughout the state, one public employee union is proposing 31 new taxes on consumers and businesses that would cost taxpayers more than \$80 billion in the next two years.

Radio Ad

Californians Against Higher Taxes began running radio advertisements in Sacramento and Los Angeles. The first ad features a man and a woman discussing the recent defeat of more taxes in the special election and new proposals to hit taxpayers further.

Man: "That'll just kill jobs and ruin the economy"

Woman: "Not to mention what it does to our family budget."

Man: "Guess we need to send them another message."

The coalition brings together taxpayers, large employers and small businesses to fight against budget plans that would hurt California's prospects for economic recovery.

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.

Construction Bill Passes Senate Committee



A California Chamber of Commerce-supported “job creator” bill that would help new residential construction survive the economic downturn passed a Senate policy committee on June 17.

AB 333 (Fuentes; D-Sylmar) would facilitate the smooth recovery of the housing market by extending the life of active tentative subdivision maps and parcel maps for a period of two years. Such an extension would ensure that the necessary entitlements for new home construction are in place when California’s economy and housing market begin to rebound.

With the nation facing its worst economic crisis since the Great Depression and California’s unemployment rate reaching historic highs, it is vital that California enable the economic engine of new housing to thrive.

Amidst this recent economic turmoil, most previously approved and conditionally approved housing projects currently in process have come to a halt. AB 333 statutorily extends the expiration date of the underlying tentative maps, thereby allowing those projects to be kept alive during the economic downturn.

AB 333 is supported by a broad coalition of employer and contractor groups.

Key Vote

AB 333 passed the Senate Local Government Committee on a vote of 5-0:

Ayes: Wiggins (D-Santa Rosa), Cox (R-Fair Oaks), Aanestad (R-Grass Valley), Kehoe (D-San Diego) and Wolk (D-Davis).

Staff Contact: Robert Callahan

Committee OKs Bill Discouraging Investments in Jobs



An Assembly policy committee this week approved a California Chamber of Commerce-opposed “job killer” bill that discourages investments in jobs and operations.

ACA 6 (C. Calderon; D-Montebello) discourages investments in jobs and operations by creating an environment of unpredictability and instability for businesses that are making long-term investment decisions and plans.

The constitutional amendment imposes an automatic sunset of seven years on any new or extended tax credit, exemption or deduction.

Key Vote

ACA 6 passed the Assembly Revenue

and Taxation Committee on a party line vote of 6-3.

Ayes: C. Calderon (D-Montebello), Beall (D-San Jose), Coto (D-San Jose), Ma (D-San Francisco), Portantino (D-La Cañada Flintridge), Saldaña (D-San Diego).

Noes: DeVore (R-Irvine), Harkey (R-Dana Point), Hagman (R-Chino Hills).

Action Needed

ACA 6 will be considered next by the Assembly Appropriations Committee. Contact committee members and urge them to **oppose ACA 6.**

Staff Contact: Kyla Christoffersen

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

calchambervotes.com

CalChamber Defends Cost-Saving Reforms in Arguments to Workers' Comp Board

The California Chamber of Commerce has submitted arguments to the state Workers' Compensation Appeals Board (WCAB) in support of cost-saving reforms affecting the payment of permanent disability (PD) awards.

In an unusual move, the WCAB has decided to reconsider two decisions made by the full board that could have a significant impact on the amount of future PD awards, which were addressed under the CalChamber-supported workers' compensation reforms of 2004.

Board Decision

The WCAB issued the *en banc* (full board) decision in the consolidated cases of *Mario Almaraz v. Environmental Recovery Services and State Compensation Insurance Fund* and *Joyce Guzman v. Milpitas Unified School District and Keenan Associates* (2009). The February 2009 decision held that:

- The American Medical Association (AMA) guidelines portion of the 2005 PD schedule is rebuttable;
- The AMA guidelines portion of the 2005 PD schedule is rebutted by showing that an impairment rating based on the AMA guidelines would result in a PD award that would be inequitable, disproportionate, and not a fair and accurate measure of the employee's permanent disability; and
- When an impairment rating based on

the AMA guidelines has been rebutted, the board may make an impairment determination that considers medical opinions not based or only partially based on the AMA guidelines.

At the same time, the WCAB issued an *en banc* decision in *Ogilvie v. City and County of San Francisco*, which held that the diminished future earning capacity adjustment used by the 2005 PD schedule also could be rebutted.

The board provided an alternate means to determine this adjustment, and held that the adjustment used by the 2005 PD schedule was rebutted whenever the board's method reached a different result.

Defending Reforms

The CalChamber believes that the board's rulings create an ad hoc approach to the PD calculations and reintroduce the use of subjective, unquantifiable factors that the Legislature had squarely rejected.

In its orders granting reconsideration, the WCAB requested input from *amicus curiae* (friends of the court). In response, the CalChamber filed an *amicus* brief that focused on the plain language of the statute and the Legislature's intent in passing the workers' compensation reforms of 2004 to support a reversal of the board's findings.

In its brief, the CalChamber explained that the Legislature sought to eliminate the vagueness and subjectivity of the

old workers' compensation system by spelling out the mandatory method for calculating the percentage of PD. The stated purpose of the new statute is to promote "consistency, uniformity and objectivity."

The CalChamber argued that the reforms accomplished that goal by defining the elements that make up the PD percentage calculation in terms of objective, measurable factors, empirical evidence and aggregate and averaged data.

In short, the CalChamber pointed out that the new system eliminates subjectivity and guess work from PD calculations, thereby ensuring that similarly-situated employees are treated equally, promoting fairness and consistency across the board.

In closing, the CalChamber said that as a judicial body, the board's duty is to enforce the statute and the authorizing regulations as the Legislature intended and called on the board to rescind its decision in *Guzman/Almaraz* and *Ogilvie*.

In addition, in light of the dramatic departure from the 2005 PD schedule proposed by *Guzman/Almaraz* and *Ogilvie*, the CalChamber urged the board to stay the effect of these decisions pending their reconsideration, or, alternatively, declare a moratorium on PD awards pending reconsideration.

Staff Contact: Erika Frank

Targeted Tax Bill Threatens to Erode Health Care Coverage

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care coverage for Californians who are "medically uninsurable."

This proposed scheme establishes a new tax on health plans that would most likely be passed onto employers that purchase health insurance, further eroding the affordability of health coverage.

CalChamber Position

The CalChamber shares the concerns regarding access to and affordability of health care for all, including the

"medically uninsurable." Reforms being considered at the federal level, however—including guaranteed issue, modified community rating and the enactment of an individual coverage requirement—bring into question the need for a state high risk pool or a MRMIP in the future.

With modified community rating, health plans may vary the community rate based on limited factors such as age, gender or smoker status. State modified community rating laws vary greatly. Some allow for many adjustment factors, but many allow for just a few.

California should not create a system that could conflict with, duplicate or overlap a new federal program.

Action Needed

SB 227 is scheduled to be considered by the Assembly Health Committee on June 30. The CalChamber is urging employers to contact committee members and urge them to **oppose SB 227**.

A sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher



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