

ALERT

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State of State Address

Governor Puts Emphasis on Job Creation, Economy

In his final State of the State address this week, Governor Arnold Schwarzenegger made it clear that his number one priority in 2010 is fostering a business-friendly economy and creating jobs.

“Governor Schwarzenegger’s commitment to creating private sector jobs and improving California’s economy is the key to solving the state’s chronic budget crisis,” said California Chamber of Commerce President and CEO Allan Zaremberg. “The Governor’s job proposals are an important step forward in generating the kind of revenue California needs to fund essential programs like education and health care.”



Governor Arnold Schwarzenegger

Associated Press Photo

“The Governor’s job-creating proposals mirror the priorities of all Californians and help restore their hope of an improved quality of life.”

The Governor said he will introduce four proposals to spur job growth, commenting that “the people and businesses of California are an engine of self-betterment and progress. As long as government keeps the engine oiled with prudent policies—and more importantly—does not pour sand in its gears, this state will persevere and prosper.”

Jobs Initiative

The Governor outlined measures he will present to the Legislature to stimulate the economy and create jobs:

- The California Jobs Initiative, creating or retaining up to 100,000 jobs and providing training to 140,000 individuals to enable them to retain their current positions or compete for higher-paying jobs.
- A measure to streamline the permitting of construction projects that already have a completed environmental impact report.
- A proposal to extend and expand the \$10,000 homebuyer tax credit to include the purchase of existing homes in addition to new residences for first-time homebuyers.
- A proposal to exempt green tech manufacturing equipment from the sales tax.

Budget/Tax Reform

Commenting that he has been calling for structural budget reforms since taking office, the Governor said California’s

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CalChamber Announces New Policy Advocates



Brenda M. Coleman



Mira Guertin



Thomas Vu

The California Chamber of Commerce has announced the hiring of three new policy advocates: Brenda M. Coleman, Mira Guertin and Thomas Vu.

“This year promises to be one of CalChamber’s busiest as we work to improve our job climate and fend off continued threats to economic recovery,” said CalChamber President and CEO Allan Zaremberg. “Expanding CalChamber’s reach in the State Capitol with the addition of three new policy advocates will further strengthen our ability to stop all ‘job killing’ legislation and to support policies that create jobs.”

“California’s employers will benefit from the experience and

knowledge that these three new CalChamber policy team members

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Labor Law Corner

Employer Has Right to Assign Employee Unused Vacation Time



Dale Louton
Senior Helpline
Consultant

We ask that all employees submit their vacation requests by March 1, but most do not. Can we assign vacation time to employees who do not sign up to take vacation?

The employer has the right to schedule vacations. Labor Code Section 227.3 provides, in brief, that vacation is vested and requires unused vacation to be cashed out at termination. Further, there can be

no forfeiture, such as a “use it or lose it” policy. The employer does have the right to manage the vacation program by setting vacation dates.

The Labor Code section states the following:

“Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

Send Out Requests

One suggestion is to send out requests around the first of the year, giving the employees two choices of dates and make it clear that in any case of conflict, seniority or any non-discriminatory method will be used to determine who gets their preference. Also make it clear that company needs will prevail.

If an employee fails to respond, the company has the right to assign vacation

dates. Managing vacation programs in this manner will help to alleviate end-of-the-year problems and high vacation balances.

Exempt employees can be required only to take vacation in full week increments. The State Labor Commissioner takes the position that exempt employees should be given at least 90 days notice of mandatory vacation. Exempt employees can voluntarily take vacation for shorter periods without notice with employer approval, however.

Exemptions

Employees may have been scheduled for vacation, but events occur such as Pregnancy Disability Leave, Family Medical Leave Act, California Family Rights Act and Paid Family Leave. Depending on the timing, this could affect vacation schedules. These acts have to be complied with.

Chapter 17 in the **2010 California Labor Law Digest** from the California Chamber of Commerce covers vacations, holidays and paid time off. This information is also online at HRCalifornia.com.

The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at www.hrcalifornia.com.

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CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Business Resources

Economic Summit. Beverly Hills Chamber. February 24, Beverly Hills. (310) 248-1000.

International Trade

Tex-Styles India. India Trade Promotion Organisation. February 24–27, Pragati Maidan, New Delhi, India. info@textylesindia.com.

Cairo International Fair. General Organization for International Exhibitions

and Fairs. March 11–22, Cairo, Egypt. info@cairofair.com.

Globe 2010. The GLOBE Foundation. March 24–26, Vancouver, B.C. (604) 695-5001.

Labor Law

HR 201: California Labor Law Update. CalBizCentral. January 13, Glendale; January 14, Costa Mesa; January 15, San Diego; January 20, San Jose; January 21, Emeryville; January 28, Live Webinar. (800) 331-8877.



Opposition Stops New Internet Taxation



Two nearly identical California Chamber of Commerce-**opposed** bills that would have harmed California online marketplaces, web-service providers, and websites of small

businesses and non-profits have died.

These bills would have undermined the ability of California companies to survive or do business in the state.

● **AB 178 (Skinner; D-Berkeley)** had been scheduled for committee consideration next week, but the author cancelled the hearing, which would have been the last opportunity for her to advance this bill. The author's staff reports she does not plan to reintroduce the bill this year.

● **ABX3 27 (C. Calderon; D-Montebello)** died when the third extraordinary legislative session was adjourned in late October 2009.

AB 178 and ABX3 27 would have established that California nexus is created when any retailer enters into any referral agreement with a California resident in exchange for compensation or commission, such as by a link, website, or otherwise that generates referrals in excess of \$10,000 in sales.

"Nexus" refers to the U.S. Constitution's requirement that an out-of-state retailer have a sufficient physical connection with a state before the state can force the retailer to collect the state's sales or use tax.

Competitive Disadvantage

AB 178 and ABX3 27 would have

created a strong incentive for out-of-state customers/retailers to utilize non-California based online marketplaces and web services to lawfully avoid collecting California sales or use tax, while still reaching California consumers.

Moreover, a host of California companies and non-profits of all types and sizes that currently depend on income from placing advertising and "click-throughs" on their websites could have lost these advertising opportunities altogether.

For example, a major Internet retailer terminated all of its "click-through" arrangements with New York-based websites almost immediately after New York adopted its new nexus law.

Many California online companies and non-profit organizations offer information and services on their websites that greatly benefit consumers, free of cost. For website owners, banner advertisements and "click-throughs" are a major source of income.

Reduces State Tax Revenue

AB 178 and ABX3 27 could have resulted in behavioral changes that would have reduced state tax revenue in other ways, thereby offsetting any new tax revenue they would have generated. California web-service and online companies are highly mobile and thus uniquely positioned to move their operations to another state.

In addition, out-of-state companies can sever their ties with California-based online marketplaces and web-service companies without losing access to consumers in the state. Reactions like these could have caused customer bases

of California web-service companies to shrink or dry up altogether, resulting in job loss and lost company revenue. Unintended consequences such as these threaten the California economy as a whole, which harms all companies whether or not they engage in e-commerce.

Costly Litigation for State

The bills also could have resulted in costly litigation against the state, because their constitutionality is still in doubt. The form of nexus that AB 178 and ABX3 27 attempted to establish has not been declared constitutional by the U.S. Supreme Court and thus would likely have been subject to immediate court challenge under the U.S. Commerce Clause.

New York was sued immediately after adoption of its nexus law in 2008 and is still in litigation with no end in sight. Such costly court challenges against California could have lasted for years, at a time when California already is suffering from budgetary challenges and a severe economic downturn.

Opposition Coalition

The CalChamber led the opposition coalition that worked to defeat these two bills and a similar budget proposal last summer. Despite the coalition's success so far, it is likely that similar approaches will be proposed again. As legislators look at the looming budget deficit, currently estimated at \$21 billion, all revenue-raising ideas will look tempting, regardless of the potential problems they might cause for the state down the road.

Staff Contact: Mira Guertin

 CalChamber

2010 Business Summit

MAY 17 AND 18 | SACRAMENTO CONVENTION CENTER

SAVE THE DATE

CalChamber Announces New Policy Advocates

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bring. All three are effective advocates who will work tirelessly to educate and inform policy makers about the challenges our businesses face.

“As part of CalChamber’s excellent team, these three will provide leadership on issues of critical importance, including making our economy and job creation the number one priority for lawmakers.”

Brenda M. Coleman

Coleman is a policy advocate specializing in climate change and energy issues.

Before coming to the CalChamber in December 2009, she was legislative director for the California Restaurant Association, where she led the association’s advocacy in areas such as civil justice, taxation, general business issues and education.

Coleman also worked as a legislative consultant for private lobbying firms, handling matters related to local government, transportation, business issues, insurance, banking and transportation.

Before shifting into the legislative arena, Coleman served as a welfare rights

advocate for Legal Services of Northern California, Chico, where she represented clients in administrative law issues pertaining to various aspects of social service programs.

She served as a legislative fellow for the California State Student Association. She is a member of the National Women’s Political Caucus, California Latino Capitol Association and Capitol Network.

Coleman holds a B.A. in political science with highest honors from California State University, Chico (where she also earned a paralegal certificate) and an M.P.A. with distinct honors from California State University, Long Beach.

Mira Guertin

Guertin is a policy advocate focusing on high technology, legal, corporate and education issues.

Before joining the CalChamber in December 2009, Guertin was a legislative advocate and regional director at TechAmerica, a high technology trade association, where she handled public policy matters in all 50 states.

Guertin holds a B.S. in psychology from Santa Clara University. She worked

for five years as a middle school teacher in Cupertino, California while earning an M.A. in education at Santa Clara University. She earned a J.D. from the McGeorge School of Law, University of the Pacific, with a certificate in government affairs.

Thomas Vu

Vu is a policy advocate on workers’ compensation, transportation and local government issues.

He came to the CalChamber in December 2009 from the California Special Districts Association, where he served as legislative director. He worked on legislation, advocacy, grassroots mobilization and regulatory support on special district and local government issues at the state level.

Vu also has worked on health care and smart growth policies, and previously interned for an Assembly member.

He holds B.A.s in economics and political science with a minor in general literature from the University of California, San Diego, and an M.P.A. from the University of Southern California.

Governor Puts Emphasis on Job Creation, Economy

From Page 1

economic growth declined 2.8 percent, but California’s tax revenues were down more than eight times that much.

“Our economy is diverse, whereas our tax system is not,” the Governor said, pointing out that 144,000 taxpayers pay almost 50 percent of all personal income taxes. The Governor called on the Legislature to begin work on the “major, radical reforms” proposed by the bipartisan Commission on the 21st Century Economy.

Governor Schwarzenegger also urged action on proposals from California Forward for performance-based budgeting and applying one-time revenue spikes to one-time uses, such as debt

reduction, infrastructure and the rainy day fund.

Additional Proposals

Other efforts the Governor asked legislators to support included:

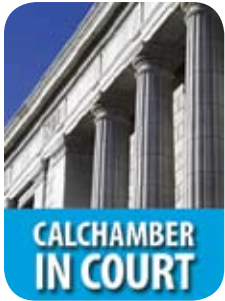
- Operation Welcome Home, a program to ensure returning veterans are provided access to the services and opportunities they deserve.
- A constitutional amendment to ensure that the state never again spends a greater percentage of funds on prisons than on higher education.
- The call for “federal fairness” in allocation of California tax dollars, as the state currently receives back only 78 cents for every dollar sent to Washington,

compared to 94 cents when President Clinton was in office. The Governor noted that California carries an unfair proportion of the cost of border security and undocumented immigrants. He also urged the California congressional delegation to vote against the federal health care bill, which places additional costs on the state, or seek a better deal for California.

● Pension reform. Annual pension costs are up 2,000 percent in the last 10 years, while revenues have increased only 24 percent, the Governor said, asking legislators to approve changes to reduce pension costs going forward.

More information on the Governor’s proposals is available at www.gov.ca.gov.

CalChamber Sues State to Return Beverage Recycling Funds to Program



The California Chamber of Commerce filed suit against the state of California on December 22, 2009, requesting that millions of dollars worth of unpaid loans taken from the Beverage Container

Recycling Fund (BCRF) over the last eight years be refunded.

Since 2002, the state of California has “borrowed” a total of \$566.7 million from the BCRF to make up for budget shortfalls in the General Fund.

Beverage manufactures are required to pay a processing fee on various beverage containers sold in California. Beverage distributors are required to make redemption payments known as the California Redemption Value (CRV). The CRV is later passed on to the consumer and the processing fees

and CRV are deposited into the BCRF. BCRF revenues are then used to make “processing payments” to recyclers to cover a portion of the costs associated with collecting and sorting beverage containers.

The larger the amount of revenues in the BCRF, the smaller the fees paid by the beverage manufacturers and the larger the payments made to recyclers.

Because of state borrowing, BCRF revenues have shrunk and payments made to recyclers have dwindled.

Increased Fees

At least \$482.7 million of the BCRF “loans” have not been repaid by the state, forcing some of California’s major recycling centers to either close or make severe staff and budget cuts.

The state Legislature’s Budget Conference Committee reported that by June 30, 2010, the BCRF would have a negative balance of \$161 million. In 2009, the Department of Conservation increased processing fees for glass and polyethylene containers (HDPE) by

more than 600 percent, and the fees for polyethylene terephthalate (PET) by more than 800 percent.

Consequently, processing payments to recyclers were substantially reduced.

Lawsuit

The purpose of the CalChamber lawsuit is to compel the Director of Finance and State Controller to transfer back to the BCRF the unpaid loans and to compel the Director of the California Department of Conservation to adjust the processing fees paid by beverage manufacturers to a level commensurate with the revenue status of the BCRF after the loaned funds are returned.

State law requires that recyclers be paid handling fees so that consumers are allowed to redeem their deposits on beverage containers. If the BCRF is not refunded by the state, the program will become insolvent and the state will lose revenue and jobs.

Staff Contact: Erika Frank

CalBizCentral Poster ProtectSM Helps Ensure Employment Posters Comply

CalBizCentral has launched a new service to help employers ensure that the employment posters they are required to display are in compliance even if mandates change during the year.

CalBizCentral’s *Poster ProtectSM* will provide those who purchase the plan with a new poster at no additional charge if any mandatory changes occur to state or federal employment law posting requirements during the 2010 calendar year. (The program does not apply to updates that are not mandatory.)

The fee is \$12.50 per non-laminated poster and \$17.50 per laminated poster.

Shipping, handling and tax are included.

CalBizCentral, the source for California business and human resource compliance products, is presented by the California Chamber of Commerce.

CalChamber Preferred and Executive members receive a 20 percent discount off the price of *Poster ProtectSM*.

The *Poster ProtectSM* plan can be used for any CalChamber *Employment Notices Posters*, whether sold stand-alone or as part of the *Required Notices Kit*.

The *Poster ProtectSM* option is available when purchasing posters. More information is available at www.calbizcentral.com.



Labor law answers online HRCalifornia.com



U.S. Trade Representative Seeks Comments on Trans-Pacific Partnership Agreement

The Office of the U.S. Trade Representative (USTR) is seeking public comments on all elements of the Trans-Pacific trade agreement in order to develop U.S. negotiating positions.

U.S. Trade Representative Ron Kirk notified Congress on December 14, 2009 that President Barack Obama intends to enter into negotiations for a regional, Trans-Pacific trade agreement. The goal of talks for the Trans-Pacific Partnership Agreement (TPP) will be to shape a high-standard, broad-based regional pact. Kirk said such an agreement would help to expand U.S. exports, saving and creating good jobs in the United States.

Written comments are due by January 25. Submissions can be made online at www.regulations.gov.

Trans-Pacific Region

President Obama first announced the United States' intention to engage with TPP countries on November 14, 2009 during his first trip to Asia as President of the United States.

The TPP has been under way since

2005. It includes the original members of New Zealand, Chile, Singapore and Brunei with additions of Australia, Peru and Vietnam. Japan, Korea, Canada and Mexico have also expressed interest in negotiations. One of the objectives of the TPP is to create a model trade agreement that other nations can join.

The Asia-Pacific region is a key driver of global economic growth, representing nearly 60 percent of global GDP and roughly 50 percent of international trade. Since 1990, Asia-Pacific goods trade has increased by 300 percent, while global investment in the region has increased by more than 400 percent. U.S. trade with Asian countries totals nearly \$1 trillion annually.

The first round of negotiations has already been announced by the current TPP members for March 2010. Staff for the USTR have begun preliminary consultations with committees of jurisdiction in Congress, with stakeholders in U.S. industry, agriculture and other sectors, and with labor and environment advisors.

The USTR team also has met with current TPP members and with countries that have expressed interest in potentially joining the negotiations.

CalChamber Position

The California Chamber of Commerce, in keeping with long-standing policy, enthusiastically supports free trade worldwide, 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. New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

For alternatives to online submissions, contact Gloria Blue, executive secretary, Trade Policy Staff Committee, at (202) 395-3475.

Staff Contact: Susanne T. Stirling

Deputy Commerce Secretary Discusses Business Visas, Export Controls



Ro Khanna (center), deputy assistant secretary of the U.S. Department of Commerce, chats with CalChamber Board member Frank Washington, CEO of Moon Shot Communications, and Susan Corrales-Diaz, chair of the CalChamber Council for International Trade and president/CEO of Systems Integrated, at the council's December 4 meeting in San Francisco. Khanna discussed department trade priorities, including business visa and export controls reform, intellectual property protection, intergovernmental cooperation and trade promotion, which will help U.S. companies increase exports while setting the country on a path to long-term, sustainable growth that creates U.S. jobs.

advocacy return on investment



"A stronger economy and jobs climate begins with supporting the ability of businesses of all sizes to succeed."

Frederick R. Ruiz
Co-Chairman and Co-Chief Executive Officer
Ruiz Foods
2009 CalChamber Chair

Working to limit regulation and reduce business costs

CAPITOL WATCHDOG

Each year CalChamber tracks more than 3,000 legislative proposals on behalf of member businesses.

MAJOR VICTORIES

CalChamber scores major victories for employers through targeted advocacy and political action. Check out: www.calchamber.com/majorvictories

ABOUT US

CalChamber is the largest, broad-based business advocate, working at the state and federal levels to influence government actions affecting all California business. As a not-for-profit, we leverage our front-line knowledge of laws and regulations to provide affordable and easy-to-use compliance products and services.

Get a great return on your investment with a CalChamber membership

2009 Sample Return on Investment for CalChamber Members

Unemployment Insurance Tax Increase Stopped (SB 222)	\$11.3 Billion Saved
Government-Run Health Care Stopped (SB 810)	\$10 Billion Saved
Split Roll Property Tax Dropped (Tax Commission Proposal)	\$7.5 Billion Saved
Energy Tax Dropped (Tax Commission Proposal)	\$6.8 Billion Saved
Climate Change Tax Increase Stopped (SB 31)	\$5 Billion Saved
Paid Sick Days Mandate Stopped (AB 1000)	\$4.6 Billion Saved
E-Commerce Taxation Stopped (AB 178, ABX3 27, SBX3 17)	\$2 Billion Saved
Industry-Specific Targeted Tax Increases Stopped (Various/Budget Bills)	\$2 Billion Saved
Workers' Compensation Cost Increase Stopped (SB 773)	\$2 Billion Saved
Independent Contractor Tax Withholding Stopped (SBX3 17)	\$2 Billion Saved
New Tax Penalties Stopped (AB 1580, AB 347)	\$1 Billion Saved
Repeal of NOL and R&D Improvement Dropped (Budget Conference Package)	\$1 Billion Saved
Health Mandates Stopped (AB 56; AB 163; AB 214; AB 244, AB 513; SB 158; SB 161)	\$187 Million Saved
Supports Construction of Vital Projects - Passed (SB 827)	\$150 Million Saved
Retail Restrictions Stopped (SB 601, SB 602, SB 603)	\$3.8 Million Saved
Total Definable Return	\$55.5 Billion

Return Per California Employee

\$4,534.61

Savings from Legislation Defeated/Stalled

Hurts Struggling Businesses Stopped (AB 842)	\$50,000 Per Lawsuit Prevented
Unreasonable New Liability for Employers Stopped (AB 793)	\$50,000 Per Lawsuit Prevented
New Lawsuits Against Small Business Stopped (SB 242)	\$50,000 Per Lawsuit Prevented
Unnecessary Clogging of Courts Stopped (SB 705)	\$50,000 Per Lawsuit Prevented
Construction Costs Increase Stopped (AB 212)	\$50,000 Per Home
Elimination of Enterprise Zone Hiring Tax Credit Stopped (AB 1139)	Up to \$36,000 per employee

Additional Legislation That Saves Costs

New Home Construction (AB 333)	250,000 housing units affected
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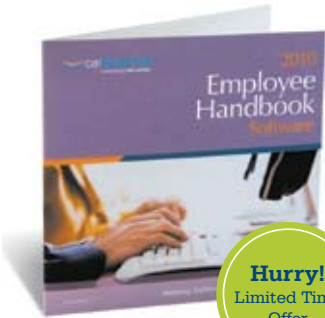
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P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

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