

ALERT

VOLUME 36, NUMBER 7 • MARCH 5, 2010



CalChamber Co-Chairs Effort to Stop Hidden Taxes



The California Chamber of Commerce is part of a coordinated effort to qualify the “Stop Hidden Taxes” initiative for the November ballot.

The initiative is an effort to

stop the Legislature from imposing hidden taxes on California taxpayers just by calling those taxes fees.

California’s Constitution requires the Legislature to pass new or increased taxes with a two-thirds vote. To circumvent this requirement, legislators simply mislabel new or higher taxes as “fees” and then pass them with a lower vote.

Reducing Tax Burden

“The way out of this recession is by creating jobs, growing the economy, and reducing the tax burden on hard-working California families and the businesses that create those jobs,” said CalChamber President and CEO Allan Zaremberg, co-chair of the Stop Hidden Taxes committee.

“Hidden taxes and higher fees work against job creation and make it even harder to recruit the businesses and

jobs that are needed to re-energize our economy and provide the taxes to fund critical state services,” Zaremberg said.

“If we are going to attract jobs to California, businesses need the certainty of a stable tax structure, not the constant exposure to unending revenue gimmicks. Voters have said ‘enough is enough’ to higher taxes and fees and passage of this measure will help end the politicians’ deceptive practice of labeling taxes as fees so they can be passed with a simple majority vote,” continued Zaremberg.

Constitutional Amendment

The Stop Hidden Taxes initiative is a constitutional amendment that simply and more clearly defines fees and taxes to close loopholes used by the Legislature to avoid the two-thirds vote requirement.

The initiative also applies to local governments; includes a provision to sunset any fee/tax increases not meeting the requirements of this measure enacted between the beginning of this year and the effective date of this measure if it is passed by voters; and prohibits the Legislature from using a simple majority vote to raise taxes on one group while reducing those on another group (the so-called “revenue neutral” maneuver now being considered by the Legislature).

Governor, CalChamber Chair to Speak at Business Summit



Governor Schwarzenegger

Governor Arnold Schwarzenegger and California Chamber of Commerce Chair Larree M. Renda will be featured speakers at the CalChamber Business Summit on May 17–18 in Sacramento.

The event offers business owners, CEOs, public affairs staff, local chamber of commerce staff, board members, committee members and many more a look at top issues facing California businesses.



Larree M. Renda

Governor Schwarzenegger and CalChamber Chair Renda will speak on May 18 at the 85th annual Sacramento Host Breakfast. The annual invitation-only gathering offers decision-making leaders in California finance, government, education, agriculture and industry the opportunity to exchange views, establish and renew friendships and create statewide atmospheres of good will and understanding at a common table.

See Governor: Page 4



Inside

Court Upholds Governor’s
Line-Item Veto: Page 5

Labor Law Corner

Employers Responsible for Pre-Employment Medical Exam Bills



Dana Leisinger
Senior Helpline
Consultant

Can we require applicants to pay for the cost of a background check as long as we reimburse them once they have worked for us a specific amount of time—like 90 days or so?

Many different laws apply to this question, and they broadly prohibit

employers from requiring any payments from an applicant (or employee) as a condition to his/her obtaining or continuing employment.

Indeed, employers cannot require that prospective employees pay for any type of medical examination or physical examination. Nor can this payment be made as a withholding from future paychecks.

Drug Testing

Pre-employment drug testing is something that employers are doing more and more. It is not regarded under the Americans with Disabilities Act as a medical examination, so it may be done at any point of the selection process, but due to cost issues, most companies restrict such testing to post-offer/pre-employment situations.

Cost is understandably a concern, but in addition to the state laws prohibiting passing on the cost to the applicant, requiring an applicant to pay for a pre-employment drug test might have the effect of discouraging some applicants, or else effectively result in less than minimum wage for the employee's first paycheck.

Labor Code Violation

The California Labor Commissioner has addressed cases where an employer charged prospective applicants a fee to attend and perform at a "workshop" to apply for a job. That process was rejected by the Labor Commissioner as violating Labor Code Section 450, which states: "No employer...may compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value."

Confidentiality

All medical tests should be considered absolutely confidential. They must be kept in a separate, confidential medical file. Any negligent release of test results could result in legal action—with potential claims for invasion of privacy as well as violation of other state and federal laws.

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 Chamber Officers

Larree M. Renda
Chair

S. Shariq Yosufzai
First Vice Chair

Timothy S. Dubois
Second Vice Chair

Frederick E. Hitchcock
Third Vice Chair

Frederick R. Ruiz
Immediate Past Chair

Allan Zaremborg
President and Chief Executive Officer

Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Blake Ellington. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, and reprint is mailed to Alert at address above.

*E-mail: alert@calchamber.com.
Home page: www.calchamber.com.*

CalChamber-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Lower Colorado River Tour. Water Education Foundation. March 10–12, Las Vegas. (916) 444-6240.

World Water Day. Sacramento Committee of Water for People. March 11, Sacramento. (916) 444-6240.

Government Relations

Tax-Exempt Organizations Workshop. IRS Exempt Organizations Specialists. March 16–18, McClellan. (703) 579-1496.

International Trade

CalAgX. Center for International Trade Development (CITD). March 9, Classes in Sacramento, Fresno and San Luis Obispo. (888) 638-7888.

Innovative Treatments of Diabetes. American Israeli Medical Association.

March 11, Encino. (888) 991-1212.
Cairo International Fair. General Organization for International Exhibitions and Fairs. March 11–22, Cairo, Egypt. info@cairofair.com.
World Trade Week Briefing. Los Angeles Area Chamber of Commerce. March 17, Los Angeles. (213) 580-7569.
California Agriculture and Our Economy. Monterey Bay International Trade Association (MBITA). March 19, Salinas. (831) 335-4780.
Certified Cargo Screening Program. Transportation Security Administration. March 22, Hawthorne. (310) 973-3132.
Globe 2010. The GLOBE Foundation. March 24-26, Vancouver, British Columbia. (604) 695-5001.
Stonetech 2010. CCPIT Building

See CalChamber-Sponsored: Page 5



Issues Critical to California's Recovery Focus of *CalChamber2010.com*

Perhaps never before has the economic health of our state been so important to voters as in this election season. Just last week, I announced the launch of *CalChamber2010.com*, a new website designed to educate voters about the candidates' stance on issues critical to job growth and renewed prosperity in our state.

Now, more than ever, voters understand the role that a vibrant economy plays in enhancing quality of life for California's working families. I suspect that many more voters this year will be looking at the candidates' track records to determine how they will cast their ballot.

'Go-To Site'

We developed *CalChamber2010.com* to be the go-to site for information on California's gubernatorial candidates. This resource provides first-of-its-kind comparisons of the three candidates. The site doesn't deal with social issues; rather, it focuses on issues of critical importance to the state's economy and job climate.

CalChamber2010.com focuses on nine areas: Budget and Spending; Jobs and the Economy; Taxes; Education; Health Care; Environment and Energy;



Commentary By Allan Zarembeg

At CalChamber2010.com, you can find independently sourced material and video clips that allow you, the voter, to see and hear what the candidates say in their own words.

Water; Public Safety; and Housing and Transportation.

By highlighting these issues that are so important to the voters, the candidates will need to make them their highest priority!

Goal: Educating Voters

We began this project with a clear goal: educating voters. This is not a site that advocates for a particular candidate. It lets the user decide. At *CalChamber2010.com*, you can find independently sourced material and video clips that allow you, the voter, to see and hear what the candidates say in their own words.

Since launching the site, the most often-asked question has been this: "How can a group that advocates on behalf of California's business community be objective in presenting material about the Governor's race?"

The answer is that we designed the entire project with a focus on providing the material objectively. To be sure that is the result, we had former Legislative Analyst Bill Hamm review and edit all the material on the site to ensure that its content is factual and presented in an independent way.

CalChamber2010.com is a site for you. Log on and see what there is to learn about the three candidates. We hope you enjoy it.

Allan Zarembeg is president and chief executive officer of the California Chamber of Commerce.

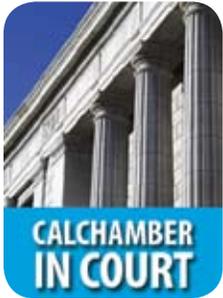
Which candidate is best for California?
Get the facts and decide for yourself.

Available exclusively at

CalChamber2010.com

 **CalChamber. 2010**
Jobs • Economy • Working Families

California Supreme Court Rules in Favor of Employer in ‘Kin Care’ Case



The California Supreme Court recently ruled in favor of an employer in a closely watched “kin care” case.

Kin care is when an employee takes time to care for a sick child, parent,

spouse, registered domestic partner or the child of a registered domestic partner.

In the case of *McCarther v. Pacific Telesis Group*, the issue before the court was whether Labor Code Section 233, which permits an employee to use accrued paid sick leave to care for ill relatives, applies to paid sick leave policies provide for an uncapped number of compensated days off.

Contrary to the Court of Appeal, the Supreme Court held that Labor Code Section 233 does not apply to paid sick leave policies which provide for an uncapped number of compensated days off.

CalChamber Argument

The California Chamber of Commerce filed a “friend of the court” brief urging the state high court to overturn the appellate court’s decision.

The CalChamber argued that employers would be forced to eliminate or reduce their existing uncapped sick pay programs—to the detriment of their employees—if the Court of Appeal decision was allowed to stand.

The case involved two plaintiffs, Kimberly McCarther and Juan Huerta, who worked for telecommunications companies. At issue was the collective bargaining agreement that allowed employees to be compensated for any day in which they missed work due to their own illness or injury for up to five consecutive days in any seven-day period.

The employees had no cap to their sick leaves, did not formally accrue sick leave and didn’t have a bank of sick leave. In order to prevent an employee from taking excessive sick days under the collective bargaining agreement, the agreement also specified an attendance management policy that subjected

employees to progressive discipline if they had eight or more absences within a 12-month period with no extenuating circumstances (unless the absences were otherwise legally protected, such as under workers’ compensation laws or the Family and Medical Leave Act of 1993). Both employees took off five or more days to care for a sick relative.

For employers, this ruling means that if they offer a sick leave policy where employees do not accrue a bank of sick leave and there is no cap on sick leave, an employee is not entitled to any protected kin care leave under California law.

Best Practices

The CalChamber urges businesses to follow best practices when dealing with kin care:

- Allow employees to use one-half of their annual earned sick leave or paid time off (PTO) for kin care, if it is available at the time of need.

- Make sure your supervisors and managers understand an employee’s right to use sick leave or PTO for kin care.

Staff Contact: Erika Frank

Governor, CalChamber Chair to Speak at Annual Business Summit

From Page 1

Larree M. Renda

As one of Safeway’s top executives, Renda is responsible for all retail strategies and a broad range of administrative functions for one of the largest food and drug retailers in North America.

The first woman and youngest person promoted to senior vice president in 1994, Renda became Safeway’s first female executive vice president in 1999. In 2001 and 2002, she was voted one of the “50 Most Influential Women in Business” by *Fortune* magazine.

In 2008, Renda became the first woman inducted into the California Grocers Association Hall of

Achievement for her career of significant accomplishments. She was named 2009 Food Industry Executive of the Year by the USC Marshall Food Industry Management Program.

Summit Speaker

Newsweek Senior Washington Correspondent and Columnist Howard Fineman will deliver the featured address at the CalChamber Business Summit on May 17.

Fineman is an award-winning reporter and writer and is the author of “Living Politics,” a column appearing on *MSNBC.com*, *Newsweek.com* and in the print magazine.

Fineman has interviewed every major presidential candidate from George H.W.

Bush in 1985 to Barack Obama early and often in the 2008 campaign cycle.

Early Bird Rates

Attendees who register for the Business Summit by April 16 qualify for savings of at least 20 percent.

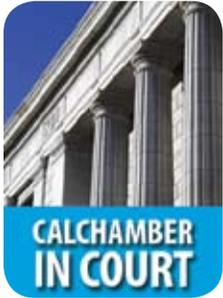
The two-day registration package, including Summit with lunch and the Host Breakfast, is \$220 now, \$275 after April 16. Other registration options are available.

Online registration and more information are available by clicking on the link at www.calchamber.com.

UnitedHealthcare is again the major sponsor of this year’s summit.

Staff Contact: Alicia Smith

State Appellate Court Upholds Governor's Line Item Veto Power



This week a state appellate court upheld Governor Arnold Schwarzenegger's ability to control spending by reducing or eliminating appropriations through the veto power.

In October 2009, the California Chamber of Commerce and three former governors filed a "friend of the court" brief in response to a legal challenge brought against the Governor in the wake of last year's budget crisis.

Along with CalChamber, the California Taxpayers' Association, the California Business Roundtable, and former Governors George Deukmejian, Pete Wilson and Gray Davis also signed onto the brief.

Spending Control

At issue was whether the Legislature may through a single bill make selective and multi-item appropriations but deprive the Governor of his constitutional ability to control spending by selectively reducing or eliminating appropriations

through the power to line-item veto. In July 2009, Governor Schwarzenegger was faced with the need to veto certain appropriations in order to cut spending.

In the 3-0 decision, Justice J. Anthony Kline wrote that the July 2009 revision did in fact count as an appropriations package.

CalChamber Argument

CalChamber argued in its brief: Legislative attempts to circumvent the Governor's veto authority are not new, and the courts have rejected these ploys.

The supreme executive power of the state is vested in the Governor. The Governor is responsible for the administration of state government for the benefit of its citizens. One of the most important functions of a governor is to control state spending. The line-item veto is an essential tool in carrying out that function.

Under the guise of a fiscal crisis, the petitioners have invented a theory out of whole cloth to deprive governors of the authority that has been conferred on them by the California Constitution since 1922.

Neutering a governor during a fiscal crisis is irresponsible, particularly when such action is not supported by logic, reason or law.

Checks and balances are what keep democratic governments functioning through the good times and bad.

If by simple wordsmithing the legislative branch can create an omnibus spending bill limiting the governor's oversight only to a veto of the entire bill, then the budgetary process is reduced to a game of "chicken" daring a governor to bring state government to a halt through a veto.

The novel and legally unsupportable theory which petitioners advance is not limited to the current fiscal crisis. If the petitioners had prevailed in their theory, absent a constitutional amendment, there will be no constraints on the Legislature to pass multi-item appropriations on a majority basis on the theory they are not appropriations subject to a two-thirds vote of the Legislature and, for the same reason, are outside a governor's line-item veto authority.

The parties who brought the case forward are considering whether to appeal to the California Supreme Court.
Staff Contact: Erika Frank

John Pérez Takes Over as New Speaker of California Assembly



John A. Pérez

Assemblyman John A. Pérez (D-Los Angeles) was sworn in this week as speaker of the California Assembly.

Pérez was first elected in 2008 to represent the 46th Assembly District, which

includes downtown Los Angeles, Vernon and Boyle Heights.

He has worked within the labor movement for more than 15 years and is the cousin of Los Angeles Mayor Antonio Villaraigosa, a former Assembly Speaker.

Pérez succeeds Karen Bass (D-Los Angeles).

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Materials Sub-council. April 6-9, Shanghai, China. kontakt@merebo.de.

Asiawater 2010. AMB Exhibitions Sdn Bhd. April 6-9, Kuala Lumpur, Malaysia. kontakt@merebo.de.

Hannover Messe 2010. Deutsche Messe AG. April 19-23, Hannover, Germany. eloisa.klementich@bth.ca.gov.

Labor Law

HR101 Part 2—Compensation and Benefits. CalBizCentral. March 11, Webinar. (800) 331-8877.

HR101 Part 3—Harassment and Discrimination. CalBizCentral. March 25, Webinar. (800) 331-8877.

HR101 Part 4—Discipline and

Termination. CalBizCentral. April 1, Webinar. (800) 331-8877.

CalChamber Calendar

Water Committee:

March 11, La Jolla

Fundraising Committee:

March 11, La Jolla

Board of Directors:

March 11-12, La Jolla

International Trade Breakfast:

March 12, La Jolla

CalChamber PAC Workshop:

March 19, Long Beach

Commission Calls for Creating Governor's Office of Economic Development

As the Governor and Legislature jockey over a "jobs agenda," a bipartisan state commission has delivered a key building block for what could be the foundation of a new state economic development effort.

The Little Hoover Commission last week recommended the state re-create a high-level economic development effort that can market the state, assist businesses wishing to locate or expand in California, and coordinate a statewide strategy of economic development strongly influenced by successful local economic development efforts.

The report, titled "Making up for Lost Ground: Creating a Governor's Office of Economic Development," can be found at www.lhc.ca.gov.

Leadership Void

After an exhaustive investigation and several public hearings, the commission found the state juggling a diffused collection of state economic development activities, generally without authority.

This created numerous problems, including a void in leadership and accountability that diminishes the state's ability to coordinate activity and shepherd

resources; a lack of capacity to promote, guide or align delivery of services; and a lack of an obvious point of contact in Sacramento for businesses, local economic development organizations or even other state-level actors to learn about and access state economic development programs, or find help to resolve permitting issues or navigating regulations.

As Bill Allen, president and CEO of the Los Angeles County Economic Development Corporation, told the commission: "There will be a global economic recovery. The question is will California get its fair share of that recovery? As presently organized, staffed, planned and budgeted, I don't believe we will."

Key Recommendations

Key recommendations from the commission are:

- The state must create a high-profile office for economic development. The Governor's Office of Economic Development should bring together the critical functions of existing state economic development entities.

- A series of action teams must be created within the Governor's Office of Economic Development. Led by a team leader within the Governor's Office of Economic Development, with other staff pooled from existing departments and program areas based on their expertise, the teams: 1) must respond reactively to businesses interested in expansion or relocation; 2) must reach out to large and existing businesses, and the economic development community, to monitor local needs; and 3) need to help businesses navigate permitting and regulatory issues.

- A policy unit must be created within the Governor's Office of Economic Development to develop a statewide vision for economic growth.

- The Governor's Office of Economic Development must serve as an advocate for big-picture prosperity and economic growth.

Contact: Loren Kaye

Loren Kaye is president of the California Foundation for Commerce and Education and a member of the Little Hoover Commission.

CalBizCentral Offers Free Webinar on Pregnancy Disability Leave

A free web seminar answering the top 10 questions employers ask regarding pregnancy disability leave (PDL) is being offered by CalBizCentral, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

This 30-minute free webinar is available on demand to registrants.

This webinar will help employers with five or more employees and employers with 50 or more employees who are not yet eligible for Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA).

Top 10 Questions

The top 10 questions that will be discussed are:

- Which employees are eligible for PDL?

- How much PDL are employees entitled to take?

- What types of wage replacement and/or benefits must be given to an employee on PDL?

- When should you require medical certification from an employee—when the leave begins, after, or both?

- An employee was put on a performance improvement plan just before they went out on PDL: What should you do about the performance issues when the employee returns from PDL?

- Your company is experiencing layoffs and has an employee who will soon be taking PDL: Can the employee take PDL early to avoid a layoff? What if she is on the layoff list?

- What should you do when a female applicant for a job discloses she is

pregnant? Can she not be hired because of her pregnancy?

- Does PDL include time off for prenatal care or if an employee miscarries?

- If the employee's health care provider has certified that the employee is able to work with no restrictions, what should be done about absences the employee says are related to the pregnancy?

- After a PDL, how much time do you give an employee for baby bonding?

Registration

Registration and more information on the webinar is available at www.calbizcentral.com/training or by calling (800) 331-8877.

Broad-Based Coalition Forms to Support Water Bond on November Ballot

Bond Passage Will Begin Addressing California's Supply Challenges

The California Chamber of Commerce is part of a broad-based and diverse coalition **supporting** passage of the water bond on the November ballot.

Passage of the Safe, Clean and Reliable Drinking Water Supply Act, an \$11.14 billion bond proposal, is needed to begin reversing decades of neglect in the state's water system.

The coalition, the Alliance for Clean Water and Jobs, includes environmentalists, farmers, business, labor, water agencies and community groups.

Water Reliability

"Water is the lifeblood of the California economy," said CalChamber President and CEO Allan Zaremberg. "Without a sufficient and reliable water supply, we cannot grow new jobs and provide for the needs of California's working families. Failure to act now to address California's water crisis will cost our state and its economy dearly. Passing this water bond is a critical step forward for California and it will benefit our economy now and for decades to come."

California's water system is outdated and straining to meet the needs of its families, farms, businesses and environment. Designed 30 years ago to serve 16 million residents, the water



system now serves more than 38 million.

Immediate investments are needed to repair and upgrade the state's network of waterways, levees and other water infrastructure; clean up sources of drinking water; increase local supplies; expand conservation efforts; and restore key ecosystems.

Unless action is taken, experts warn that California will face continued water shortages, the potential for catastrophic failure of the water delivery system, and environmental collapse in areas vital to drinking water and wildlife.

Farmers note that severe cuts in water supply have forced many farmers to plow under crops and have turned many farms into dustbowls. In 2009 alone, farm losses due to water shortages are estimated at more than \$3 billion. Thousands of farm workers have been displaced.

Needed Funding

The bond act would provide funding to fix California's aging water infrastructure, to protect the environment and restore reliability of water supplies.

This includes projects and programs to reduce the impact of the state's drought; increasing the reliability of water supplies; sustaining and restoring the San Joaquin Sacramento Delta; improving the operation of the state's water system; increasing conservation and water recycling; increasing conservation and watershed protection; protecting groundwater and improving water quality.

Leading conservation groups have expressed support for the water bond because it will begin reversing decades of environmental degradation in the Delta and other areas that threaten fish, birds and other wildlife.

Education Campaign

Coalition partners plan a months-long effort to educate California voters through grassroots, media, social media and online campaign strategies.

The coalition's website is at www.waterforca.com and will serve as an informational portal and online organizing tool throughout the campaign. The campaign has also launched a Facebook page.

CalChamber

2010 Business Summit

MAY 17 AND 18 | SACRAMENTO CONVENTION CENTER

SPECIAL THANKS TO OUR MAJOR SPONSOR



Governor Arnold Schwarzenegger



Larree M. Renda
CalChamber Chair

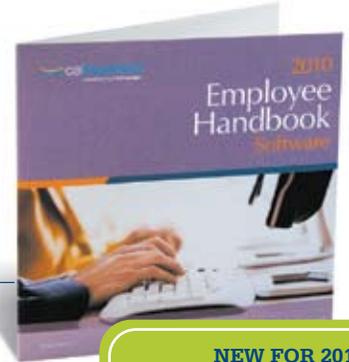


Howard Fineman
Senior Washington
Correspondent, *Newsweek*

Laws are getting tougher. Creating a handbook just got easier.



Nothing makes it easier to produce an employee handbook that is compliant with California and federal law than our **Employee Handbook Software for California Employers 2010 Edition**. Just answer questions about your company's profile, size and needs. The program will generate a custom handbook that could reduce your legal risks. Updating your existing handbook is even easier.



Hurry!
Limited Time Offer

For a limited time, get a \$5 Starbucks card* when you purchase our **Employee Handbook Software for Employers 2010 Edition**. Order the English version, the Spanish version or a set of both. Use priority code EH2 when ordering. Offer expires 4/2/10.*Preferred and Executive Members will receive their 20% discount in addition to this offer.

NEW FOR 2010
Social networking guidelines, a Spanish version and more.

Order online at www.calbizcentral.com or call 1-800-331-8877

ADDRESS SERVICE REQUESTED

Helping California Business Do BusinessSM

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

CALIFORNIA CHAMBER OF COMMERCE