

ALERT

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 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Employers Testify on Need for Flexible Scheduling Bill



Employers and the California Chamber of Commerce this week called on the

Senate Labor and Industrial Relations Committee to pass a bill that will provide a simplified, voluntary way for establishing flexible work schedules.

SB 1335 (Cox; R-Fair Oaks/Dutton; R-Rancho Cucamonga), a CalChamber-sponsored job creator bill, was praised by employers and employees, and supported by 34 local chambers of commerce. The bill provides a simplified process for establishing flexible work schedules and creates a win-win-win for employees, employers and the environment by promoting better

work-life balance, improved workplace productivity and retention, and reduced traffic and greenhouse gases.

A vote was not taken on the bill because of absent committee members. SB 1335 will up for a vote on Monday, April 19.

Incentive to do Business in State

In testimony to the committee, Brian Hawley, chairman and chief financial officer of Luminex Software, which has offices in both Riverside and San Diego, emphasized the important message that SB 1335 sends to employers about job creation and to employees about their individual needs.

“You are telling the employers that you really do want us doing business in California, and not moving or expanding

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Tax Conformity/Mortgage Debt Forgiveness Bill Signed Into Law



Governor Arnold Schwarzenegger this week signed into law California Chamber of Commerce-supported legislation that will bring a number of the

SUPPORT

state’s tax laws in line with federal laws, including specifically providing greater tax relief to struggling California homeowners who have sold their homes as short sales or modified their mortgage loans.

SB 401 (Wolk; D-Davis) reduces complexity and waste in tax reporting and administration by conforming many California tax provisions to recent changes in federal tax law and includes a conformity provision that gives financial relief to troubled borrowers by excluding debt forgiven by a lender from a borrower’s taxable income.

Harmful Tax Penalty Left Out

Strong opposition from the CalChamber and other employer groups resulted in the removal of a controversial provision imposing a 20 percent penalty on “erroneously” claimed refunds.

In actuality, the penalty would have

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Photo by Megan Wood

Presenting the case for CalChamber-sponsored flexible schedule legislation before a Senate committee are the co-authors of SB 1335 (from left) Senators Bob Dutton (R-Rancho Cucamonga) and Dave Cox (R-Fair Oaks) and employers Greg Gierczak, SureWest, and Brian Hawley, Luminex.

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Labor Law Corner

Workplace 'Discrimination' Not Always Against the Law



Ellen S. Savage
HR Advisor

My employee says her supervisor is discriminating against her. She says he gives her all the hardest assignments, and when she goes to him for help he is sarcastic and rude, but she does not know why. Is this illegal?

Unfortunately, nobody says you get to have a delightful day at work every day, or that your boss has to be nice to you.

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While the situation you are describing may be unpleasant for the employee, it may also be perfectly legal.

'Discrimination' Definition

Employees often throw around the word "discrimination," but may not know what that word truly means in a legal sense. Discrimination is simply treating someone differently based on the group, class or category to which that person belongs.

Managers need to know that discrimination is *illegal* only if it is based on a group, class or category specifically protected by law, or if it is done in retaliation for exercising a legal right such as filing a workers' compensation claim.

For example, discrimination based on a person's sex, race, national origin or age is clearly illegal. Demoting an employee because he/she has exercised his/her right to take family leave to bond with a new baby would be against the law. Similarly, it is unlawful to refuse to give a raise to an employee who has otherwise earned it but who takes time off work each week to attend religious services.

Legal 'Discrimination'

On the other hand, discrimination based on other characteristics or factors is perfectly legal and actually quite common. For example, one group of employees may be treated better than another based on the category of seniority, by giving employees with more seniority more vacation.

A manager could give hiring preference to applicants who earned a degree from a University of California campus versus one from a California State University.

A company could offer a better benefits package to employees who work in its office compared to what is offered to its warehouse employees, or allow a more relaxed dress code for the warehouse employees.

In each instance, a group or class of employees or applicants is being treated differently than another group or class, but because the distinction is not drawn based on any category protected by law, the "discrimination" is not illegal.

Identify Discrimination Type

The issue at hand for the employee who is complaining of discrimination because she gets tough assignments and has a sarcastic and rude supervisor is to find out why she thinks the supervisor is treating her that way. Unless the employee claims it is related to her race, sex, national origin or some other characteristic protected by law, or unless the employee claims it is retaliation for having exercised some legal right (such as reporting a safety violation to the Occupational Safety and Health Administration), there is no *illegal* discrimination. More often, the employee will say something like "I just think he doesn't like me."

Of course, regardless of whether there is illegal discrimination, an employer would be wise to look into the supervisor's behavior and determine whether the company would benefit by providing him counseling in more appropriate personnel management techniques. While his behavior may not be illegal, it certainly does not create a productive work environment and could lead to meritless, but expensive, legal claims.

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

Business Summit/Host Breakfast:

May 17-18, Sacramento

Council for International Trade:

May 17, Sacramento

Water Committee:

May 17, Sacramento

Environmental Committee:

May 17, Sacramento

Board of Directors:

May 17-18, Sacramento

Fundraising Committee:

May 18, Sacramento

Public Affairs Council Spring Retreat:

June 15, Sacramento



New Economic Development Office Open to Help California Businesses

Governor Arnold Schwarzenegger last week signed an executive order establishing the Governor's Office of Economic Development (GoED) to help businesses acquire the direction, information and resources they need to invest, succeed and expand in California.

GoED is open for business and can be contacted toll-free at 877-345-GoED (877-345-4633) or at www.business.ca.gov.

CalChamber Agenda of Solutions

The California Chamber of Commerce began a policy development and public education campaign in 2009 to bring more focused attention to economic issues.

As part of an agenda of solutions proposed for this year, the CalChamber recommended the administration identify and empower Cabinet agencies to drive economic development, assist business location and retention, and market California for job-creating investments.

One-Stop Shop

The idea of creating a one-stop shop to cater to the needs of California businesses was originally suggested as a part of the Governor's 2004 *California Performance*



Review and again in a February 2010 Little Hoover Commission report.

The office will have three defined functions:

- promote California as a place to do business;
- support businesses interested in starting, growing, financing, expanding or relocating in California; and
- help those businesses facing challenges to operating in California.

Those who want to do business in California must interact with the state in many ways, such as establishing, registering and maintaining their businesses, obtaining permits and licenses, reporting required information and paying taxes. The state also has more than 100 individual economic development

programs and services available to businesses.

At GoED, experienced staff will guide businesses through the various state requirements and help them gain access to state resources.

Existing Resources

GoED is being established, staffed and housed using existing state resources. The administration is drafting legislation that will make GoED a permanent entity in state government.

To serve as director of the new office, the Governor appointed Joel Ayala, former president and CEO of the California Hispanic Chambers of Commerce.

"California is the best place in the world to do business, and by cutting red tape and streamlining functions, my Office of Economic Development will make the state an even better partner to the economy," said Governor Schwarzenegger.

At the news conference announcing creation of the office, the Governor reiterated his commitment to vetoing all "job killer" legislation.

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Business Resources

Around the World with LES: PDS 100. Licensing Executive Society, Silicon Valley Chapter. April 26, Stanford. (415) 564-2600.

Silicon Valley 10th Annual Conference. Licensing Executive Society, Silicon Valley Chapter. April 28, Palo Alto. (415) 564-2600.

Toward Sustainable Groundwater in Agriculture. Water Education Foundation. June 15-16, San Francisco. (916) 444-6240.

International Trade

Expanding Your Horizons: Doing Business Abroad. Los Angeles World Airports. April 22, Los Angeles. (310) 646-4268.

International Green CEO Summit. Indonesian Chamber in Jakarta. April 28-May 1, Jakarta, Indonesia. grace@greenceosummit.com.

Chilean Wine Tasting. Wines of Chile Promotion Group. April 29, San Francisco. (415) 982-7665.

World Trade Week Breakfast. Los Angeles Area Chamber. May 3, Los Angeles. (213) 580-7569.

IBAglobal 17th Annual World Trade Conference. International Business Association. May 4-5, Ontario. (702) 417-5467.

Monterey Bay Marketplace—A Model for the World. Monterey Bay International Trade Association and Monterey County Business Council. May 10, Monterey. (831) 335-4780.
Consular Corps Luncheon. NorCal World

Trade Center. May 18, Davis. (916) 447-9827.

Clean-Tech Trade Mission to China. Monterey Bay International Trade Association and Asia Gateway Inc. May 22-29, Shanghai, China. (831) 335-4780.

Destination India 2010: New Business Trends. Quanta Consulting, Inc. June 17, Los Angeles. (949) 480-9466.

Agri Livestock Fisheries SMEDEX 2010. Sri Lanka Consulate in Los Angeles. June 18-20, Colombo, Sri Lanka. (213) 387-0214.

Business Future of the Americas Conference. The American Chamber of Commerce of Peru. June 21-22, Lima, Peru. (510) 705-8000.

Tax Conformity/ Mortgage Debt Forgiveness Bill Signed Into Law

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applied whenever the Franchise Tax Board decided a refund request was not reasonable, but “reasonable” was not defined, giving the Franchise Tax Board wide latitude to impose the penalty.

As applied in California, the new penalty would have been harmful to taxpayers when combined with an existing, onerous California-only “understatement” tax penalty that has been described as the worst tax penalty in the nation.

On March 25, the Governor vetoed similar special session legislation containing the penalty provision, SBX8 32 (Wolk; D-Davis).

Now in Sync with Federal Law

California’s tax laws have been out of sync with federal law since 2005, when the last comprehensive tax conformity bill was enacted.

This lack of conformity has created a

huge burden for taxpayers in California, including many small and large businesses, who already are overburdened by excessive regulation and taxation.

A lack of conformity perpetuates the perception that California is hostile to business, the CalChamber and others have pointed out to legislators.

SB 401 provides conformity that will not drain the state coffers, thereby easing tax compliance burdens, improving taxpayer compliance, saving the state money, making California business-friendly, saving taxpayers money and allowing more money to be invested in jobs and capital.

Homeowner Tax Relief

Existing state law recognizes forgiven mortgage debt as income for personal income tax purposes. State law excluded forgiven debt as income from 2007 through 2008.

In light of the mortgage foreclosure crisis, Congress suspended this requirement in federal tax law until January 1, 2012.

The CalChamber pointed out to legislators that the extension of tax debt forgiveness should continue in California as recognized in federal law. California must act in concert with the federal government to avoid handing huge tax bills to displaced homeowners.

Debt forgiveness addresses a significant impediment for homeowners seeking short sales as an alternative to foreclosure and removes the perverse incentive to foreclose.

Allowing struggling homeowners or those who have lost their homes to keep more of their money to spend in the California economy will contribute to the state’s economic recovery.

Staff Contacts: Kyla Christoffersen, Marti Fisher

Employers Testify on Need for Flexible Scheduling Bill

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operations in other states which follow more flexible guidelines,” Hawley said. “More importantly, you are telling employees that you really do care about their needs.”

Hawley explained to the committee that without this bill, Luminex is unable to accommodate reasonable requests from its employees to work flexible schedules that are more conducive to the employees’ needs.

“It’s frustrating to both employers and employees that something mutually agreeable, perfectly reasonable and very common sense is so difficult to achieve,” he said.

He gave several specific examples of employees who would have benefited from having a flexible work schedule to facilitate weekend custody of their children, reduce commuting time, and further their education.

“As you can see, employees have individual and unique needs,” Hawley said. “A flexible schedule is an incredible benefit that we can give employees, allowing them to work a full 40-hour week, but customize their schedule to

better meet their personal needs and requirements.”

‘Common Sense’

Greg Gierczak, executive director of external relations for SureWest Communications (SureWest) from Roseville, emphasized that restrictive rules, like the current overtime law, affect business and investment decisions for California companies.

“The current law is just one of many restrictive rules in California as compared to other states that make it more difficult for a company like SureWest to actually operate in California...our SureWest CEO has stated before that California’s restrictive rules are a detriment to maintaining jobs in California,” said Gierczak. “Basically I’m asking that you help fix at least one of these restrictive rules by voting ‘yes’ on this bill.”

Gierczak said that the current process for establishing a flexible workweek is incompatible, unproductive and what the state really needs is a common-sense solution that lets employees and employers work together.

“The current law as it exists today

really hinders basically the work hour flexibility because it involves this bureaucratic process that simply doesn’t fit the business environment,” he said. “SureWest is really looking for a common-sense type solution that will provide the employees and employers with the flexibility to run the business and actually to provide services to its customers. This bill really does that, as it does not force either the employee or the employer into any requirement and actually provides for the individual employee the same rights that unions have today under the current law to negotiate a flexible work schedule for themselves that fits their own needs and will fit the businesses’ own needs.”

Summarizing for the committee why SB 1335 really is a job creator, Gierczak said, “It really comes to the issue of when we have to make investments in California or in other states where we operate, we have to consider those rules; is it better to put our investment dollars in other states that are more flexible and easygoing and less costly to run?”

Staff Contact: Kyla Christoffersen

Overview of June Ballot Propositions

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

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

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

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

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

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

Proposition 13

Limits on Property Tax Assessment. Seismic Retrofitting of Existing Buildings. Legislative Constitutional Amendment.

Bars property tax increases on construction for seismic retrofits. Sets statewide standard for seismic retrofit improvements that qualify.

Placed on Ballot by: SCA 4 of 2008 (Ashburn; R-Bakersfield)

CalChamber Position: Support

Reasons for Position

Proposition 13 promotes equity among taxpayers who reconstruct or improve structures to comply with local ordinances relating to seismic safety. The measure also eliminates the disparate treatment between seismic safety improvements made to different types of property.

Currently, there exists an inequity in the State Constitution regarding the assessment of buildings that have undergone repairs to make them safer during earthquakes. Some properties, which have repairs made to increase

the building's safety in the case of an earthquake, are subject to reassessment and higher taxes while others are not.

Only property owners with reinforced masonry structures receive an unlimited exclusion from reassessment.

Proposition 13 corrects this unfair policy by providing equal treatment for all property owners who incorporate seismic safety improvements regardless of the type of building. It assures that any property having undergone a seismic safety retrofit will be exempt from property tax reassessment for that improvement.

Proposition 14

Elections. Increases Right to Participate in Primary Elections.

The California Top Two Candidates Open Primary Act changes the primary election process for congressional, statewide and legislative races. Allows all voters to choose any candidate regardless of the candidate's or voter's political party preference. Ensures that the two candidates receiving the greatest number of votes will appear on the general election ballot regardless of party preference.

Placed on Ballot by: SCA 4 of 2009 (Maldonado; R-Santa Maria)

CalChamber Position: Support

Reasons for Position

Proposition 14 will increase voter participation and empowers Californians in all state legislative districts to elect candidates who represent the broadest views in their district.

The way political districts are drawn now, most have a majority or more of voters registered in one major party or another. Consequently, the candidate who wins the primary of the majority party in the district is virtually guaranteed to win election to the state Legislature or Congress in the general election. It is not uncommon for the winner of a race with no incumbent to win a primary with support of only 10 to 15 percent of the registered voters

Proposition 14 will open up the primary election and choice of candidates available in the November election. The

measure would enable voters to vote for any candidate they wish in the primary election, regardless of political party preference. Independent voters, the growing number registering as "decline to state," can have a say in primary elections also.

In the November election, all voters will have a chance to choose between the top two vote getters in the primary election.

Widening the voter pool of the election will lead to the selection of candidates who represent the views of a broader portion of district voters and are more likely to seek practical solutions. Having to seek support from a majority of all voters will make these candidates more attentive to the issues of jobs and the economy, which are a priority for the voters but not many current legislators.

More Information

www.yeson14openprimary.com

Proposition 15

California Fair Elections Act.

Repeals ban on public funding of political campaigns. Creates a voluntary system for candidates for Secretary of State to qualify for a public campaign grant if they agree to limitations on spending and private contributions. Funded by voluntary contributions and biennial tax on lobbyists, lobbying firms and lobbyist employers.

CalChamber Position: Oppose

Reasons for Position

This proposed measure violates the Constitution because the Legislature has no legal authority to submit the provision to the voters for approval.

More than 20 years ago, voters prohibited taxpayer funds from being given to politicians for their political campaigns. Proposition 15 repeals that prohibition.

Even if the court rules that the lobbyist tax is unconstitutional (as two courts already have ruled), the repeal of the ban on public campaign financing remains in effect.

Proposition 15 does not stop the influence of special interest money. Lobbyists are already prohibited from

contributing to candidates. Proposition 15 specifically authorizes politicians to continue to ask for money from special interests for things like legal fees, inaugural parties and “officeholder expenses.”

California voters have already rejected public campaign financing twice in the last 10 years.

Taxpayer financing of political campaigns is a bad idea. Proposition 15 actually forces lobbyists to fund the campaigns of candidates for secretary of state, the same official whose job it is to regulate lobbyists.

More Information
www.stopprop15.com

Proposition 16

Imposes New Two-Thirds Voter Approval Requirement for Local Public Electricity Providers. Initiative Constitutional Amendment.

Requires two-thirds voter approval before local governments may use public funds, bonds or other indebtedness to start up electric delivery service, expand electric delivery service into a new territory or implement a community choice aggregation program.

Placed on Ballot by: Petition signatures.

CalChamber Position: Support

Reasons for Position

Proposition 16 will ensure that taxpayers and ratepayers, who are ultimately financially responsible to pay for the expansion or repay the debt, have the final say if their local elected leaders decide to get involved in or extend their involvement in the retail electric delivery service business.

Like most local special tax and bond decisions in California, two-thirds voter approval will be required.

In tough economic times like these, local voters have every right to have the final say on an issue as important as who provides them with local electric service, and how much it will cost. Two-thirds voter approval is California’s best protection against costly and risky government schemes to take over local electric service.

More Information
www.taxpayersrighttovote.com

Proposition 17

Allows Auto Insurance Companies to Base Their Prices in Part on a Driver’s History of Insurance Coverage. Initiative Statute.

Permits companies to reduce or increase cost of insurance depending on whether driver has a history of continuous insurance coverage.

Placed on Ballot by: Petition signatures.

CalChamber Position: Support

Reasons for Position

The measure will align California with the vast majority of other states allowing insurers to offer this discount to all drivers who maintain ongoing auto insurance coverage. It will also allow consumers to access competitive or lower rates if an insured changes their insurer.

Under current law, drivers who have maintained auto insurance with the same company are eligible for a continuous coverage discount. A flaw in existing law, however, prohibits drivers from taking

this continuous coverage discount with them if they switch insurance companies to get lower rates.

Proposition 17 can save insured drivers up to \$250 by eliminating a surcharge for changing insurance companies.

Proposition 17 will allow insured drivers to take continuous coverage discounts with them if they change insurers, just like good driver discounts.

More Information
www.yesprop17.org

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.

Proposal Removes Employer Flexibility in Managing Leave Requests



A California Chamber of Commerce-**opposed** bill that removes flexibility employers need to balance bereavement leave requests with pressing leave requests by other employees for other reasons is set for hearing next week.

AB 2340 (Monning; D-Carmel) potentially makes the management of overlapping leave requests unfeasible or unfair and could create staffing shortages that temporarily halt operations by requiring every employer to provide every employee with up to three days of unpaid bereavement leave per year.

The bill further prohibits any adverse action against employees for requesting and taking such leave and provides a private right of action for violations of the bill's provisions.

The CalChamber supports employers having a policy of providing bereavement

leave. The CalChamber opposes AB 2340 because it imposes a rigid bereavement leave mandate.

A private sector mandate in this area is not the appropriate role of government or the correct policy approach and could have unintended negative consequences for reasonable, well-intentioned employers. Bereavement leave should be left to employers to provide on a voluntary basis.

Action Needed: AB 2340 is scheduled to be considered by the Assembly Labor and Employment Committee on April 21. The CalChamber is urging the business community to write committee members and urge them to **oppose AB 2340**.

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

Staff Contact: Kyla Christoffersen

Hearing Set on Bill Hindering U.S.-Colombia Trade Agreement



The California Chamber of Commerce is urging members of the business community to **oppose** a state resolution that memorializes Congress to oppose the U.S.-Colombia Free Trade Agreement (FTA).

AJR 27 (Torrico; D-Fremont) has been scheduled to be considered by an Assembly policy committee on April 20.

AJR 27, a California Assembly Joint Resolution, would cast the FTA and Colombia in an unproductive light if it were to pass.

Colombia is an important trading partner with California and the United States and also a partner in stopping drug trafficking

The U.S.-Colombia FTA, signed in

2006, is a critical element of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives. The agreement will also increase momentum toward lowering trade barriers and set a positive example for other small economies in the Western Hemisphere.

The FTA is pending approval by the U.S. Congress.

Action Needed: Write the Assembly Jobs, Economic Development and the Economy Committee and your legislators and urge them to **oppose AJR 27**.

For a sample letter, visit www.calchamber.com/colombia.

Staff Contact: Susanne Stirling

CalChamber

2010 Business Summit

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