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Brown Takes Oath of Office as 39th California Governor

Jerry Brown was sworn in as California's 39th Governor on January 3 in Sacramento.

In his inaugural address, Brown focused on having an honest dialog about what it takes to get the state out of fiscal crisis and discussed the pioneering spirit of Californians in overcoming adversity.

CalChamber President and CEO Allan Zaremberg commented, "Governor Brown's inaugural speech reflected the experience he brings to the office and his focus on problem solving.

"We at the California Chamber of Commerce look forward to responding to his call to work together to improve California. We wish Governor Brown the success that will lead to a stronger economy, private sector job growth and solutions to his frank assessment of California's ongoing budget crisis."

Speech Excerpts

Below are excerpts from Governor Brown's inaugural address:

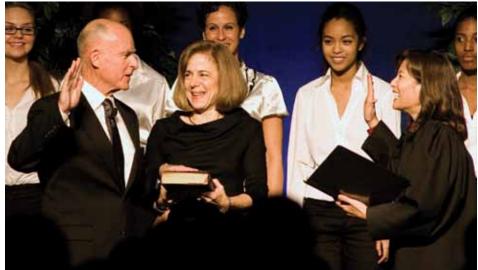
"The year ahead will demand courage and sacrifice. The budget I propose will assume that each of us who are elected to do the people's business will rise above ideology and partisan interest and find what is required for the good of California. ... "In seeking the Office of Governor, I said I would be guided by three principles:

"First, speak the truth. No more smoke and mirrors on the budget. No empty promises.

"Second, no new taxes unless the people vote for them.

"Third, return—as much as possible—decisions and authorities to cities,

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Jerry Brown is sworn in as the 39th Governor of California by California Supreme Court Justice Tani Cantil-Sakauye on January 3 in Sacramento. Anne Gust Brown (center) holds her grandfather's Bible, also used at the couple's wedding.

Proposed Federal Rule Requires Notifying Employees of Right to Unionize



The National Labor Relations Board (NLRB) is seeking comments on its proposal to require private sector employers to notify employees of their right to unionize or not.

The proposed posting requirement covers all employers subject to the National Labor Relations Act (NLRA). Employers of airline, railroad and agricultural workers are not covered.

The proposed notice would be mandatory in almost all workplaces, regardless of whether union employees are present. The posting requirement is similar to one now required for government contractors.

The new notice, as proposed, states that employees have the right to act together to improve wages and working conditions, to form, join and assist a union, to bargain collectively with their employer, and to choose not to do any of these activities.

The proposed notice also provides examples of unlawful employer and union conduct and tells employees how to contact the NLRB with questions or complaints.

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Inside-

'Judicial Hellholes': Page 3

Associated Press Photo/Anne Chadwick Williams



Labor Law Corner

Employers May Rescind Conditional Job Offers If...



Sunny Lee HR Advisor

We hired an employee and now want to rescind the offer. Do we have any liability?

The answer to this question depends on whether the offer is a firm or conditional offer, and whether the applicant has detrimentally relied on that offer.

Conditional and Firm Offers

Making an offer of employment to an applicant is a commitment to hire. You

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E-mail: alert@calchamber.com. Home page: www.calchamber.com. may make it contingent on other factors, such as successfully passing pre-employment drug testing and/or a criminal background check.

Employers clearly have the right to condition offers on job-related pre-employment screens that may affect whether the candidate will become employed. Employers also have the right to make an offer subject to the approval of others in the company.

An offer does not become binding until the applicant accepts it; therefore, you are free to change the terms or withdraw the offer if the applicant has not accepted the offer or detrimentally relied on it. If the applicant counters with different terms, you may consider your offer rejected and withdraw it.

The Helpline often gets calls about employees who are not ready to start work after an offer has been made and accepted. Clearly, if the employer makes an offer with a firm start date, then that date becomes part of the offer. If the applicant cannot start on that date, regardless of the reason, the employer may withdraw the offer.

Internet Searches

Employers have to be careful about using non-work-related information as a basis for withdrawing an offer; this may include information learned by doing an Internet search of the person or visiting social networking sites.

In California, the right to privacy contained in the California Constitution may protect the privacy rights of applicants and employees. Because this is a new area and there is little guidance from the courts, consult with your labor and employment attorney before withdrawing an offer, and discuss the factors involved.

Liability

A situation may occur where the employer finds a better applicant after making an offer. Where no conditional offer has been made (subject to further screening or the approval of the CEO, or some other supervisory persons involved in the search), the applicant may have relied on the offer and given notice to his/her present employer.

If you revoke an offer after that notice was given, the applicant may lose that job, seniority and benefits. If the appli-

cant has moved closer to the new job in reliance on the offer, you may be held liable for resulting damages.

The reliance on an offer that causes detriment to an applicant may subject the employer to a lawsuit. Therefore, before withdrawing an offer of employment, an employer should consult with legal counsel.

An applicant may seek double damages in a civil action if he/she was persuaded, influenced or enticed to move his/her place of residence based on misrepresentation about either the length of time a job would last, the character of a job, compensation or the existence of a labor dispute or strike.

Labor Code Sections 970 and 972 allow an applicant to sue any person, agent or officer for double damages for knowingly making any false representation. In addition, a person who is guilty of violating Section 970 is guilty of a misdemeanor punishable by a fine of up to \$1,000 or imprisonment up to six months, or both.

The hiring process is important for both the employer and applicant. Being clear about the hiring process and what the job entails (pay, benefits and start date) are essential to forming a good working relationship. Making an offer of employment, whether it is verbal or in writing, can be binding if the applicant accepts the offer. Therefore, it is important to be clear about contingencies and the approval process before offering an applicant a job.

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.

Labor law answers online: **HRCalifornia.com**







Tort Reform Association Report Labels LA, Humboldt Counties 'Judicial Hellholes'

Los Angeles and Humboldt counties have been designated as "Judicial Hellholes" in the latest report of the American Tort Reform Association (ATRA).

ATRA describes "Judicial Hellholes" as places where civil judges "systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits."

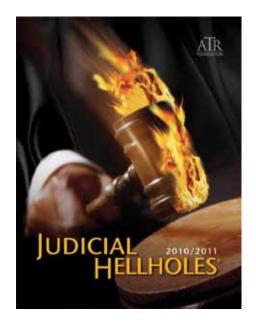
The jurisdictions named in the report aren't the only unfair courts in the nation, ATRA states, "but they are among the most unfair, based on our survey of litigants and considerable independent research."

According to the report, "California has a history of wacky consumer class actions that further encourage plaintiffs' lawyers to seize on minor missteps as a means to lots of cash. And though state voters passed an initiative attempting to rein in this type of litigation in 2004, it remains big business for certain California plaintiffs' lawyers."

Los Angeles County

As an example of why Los Angeles courts had earned a reputation as "the bank," the report cites a jury in late April 2010 awarding \$200 million in punitive damages on top of \$8.8 million in compensation in an asbestos case.

"Such punishment makes little sense when one considers the city's power and water authority, which was held liable for one-third of the award, stopped selling



asbestos-containing products 18 years ago, and all of the company officials there at the time are long gone," the report states.

The report notes that the size of the punitive damages award in this case is 23 times the size of the plaintiff's loss and is out of line with the U.S. Supreme Court guidelines for determining excessiveness. If upheld, the decision would become the largest lawsuit award in California history for mesothelioma, a rare cancer usually caused by exposure to asbestos, according to the report.

Humboldt County

The report cites a case out of Eureka in Humboldt County, where \$677 million was awarded in a class-action lawsuit against a nursing home provider that operates 22 facilities throughout the state. The alleged wrongdoing was that staffing at the facilities occasionally fell below the 3.2 nursing hours per patient per day required by the California health code. Punitive damages were to be determined in a second phase of the lawsuit.

Tort Reform Foundation

The Judicial Hellholes program is a project of the American Tort Reform Foundation (ATRF), begun in 2002. In annually published reports, the program has documented various abuses within the civil justice system, focusing primarily on jurisdictions where courts have been radically out of balance. To the extent possible, ATRF is specific in explaining how and why particular courts, laws or regulations can produce unfair civil justice outcomes in the jurisdictions cited.

The ATRF is a District of Columbia non-profit corporation, founded in 1997. The primary purpose of the foundation is to educate the general public about how the American civil justice system operates; the role of tort law in the civil justice system; and the impact of tort law on the private, public and business sectors of society.

The full report can be read at www.judicialhellholes.org.

Insurance Commissioner Orders Emergency Health Care Regulation

Newly inaugurated Insurance Commissioner Dave Jones signed a Notice of Emergency Regulation on January 3 requiring insurance companies to devote 80 percent of revenue to policyholders' claims in California's individual insurance market.

Current California law requires insurers to spend at least 70 percent of revenue on medical care.

The 80 percent requirement is included in the national health care law, which some members of Congress are seeking to repeal. The emergency rule must be approved by the state Office of Administrative Law (OAL), which will review factors such as the insurance commissioner's authority to act. If OAL approves the emergency rule, it will go into effect this month, giving the Insurance Department six months to write permanent rules.

In remarks following his swearing-in, Jones said his three main priorities are:

• implementation of federal health care reform, including continuing to seek authority to "reject excessive health insurance premium increases";

- to "level the playing field" for consumers and businesses as they deal with insurance companies; and
- ensuring California has "a viable and competitive insurance market, where carriers are solvent, where new products like 'Green Property Insurance' can be brought to market to provide more choices and where consumers are treated fairly."

Staff Contact: Marti Fisher



Brown Takes Oath of Office as 39th California Governor

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counties and schools, closer to the people.

"With your help, that is exactly what I intend to do. The budget I present next week will be painful, but it will be an honest budget. The items of spending will be matched with available tax revenues and specific proposals will be offered to realign key functions that are currently spread between state and local government in ways that are complex, confusing and inefficient. My goal is to achieve greater accountability and reduce the historic shifting of responsibility back and forth from one level of government to another. The plan represents my best understanding of our real dilemmas and possibilities. It is a tough budget for tough times. ...

"Choices have to be made and difficult decisions taken. At this stage of my life, I have not come here to embrace delay or denial. ...

"The people of California have not lost their pioneering spirit or their capacity to meet life's challenges. Even in the midst of this recession, Californians this year will produce almost two trillion dollars of new wealth as measured by our state's domestic product. ...

"This is a time to honestly assess our financial condition and make the tough choices. And as we do, we will put our public accounts in order, investments in the private sector will accelerate and our economy will produce new jobs just as it has done after each of the other 10 recessions since World War II. ...

"Aside from economic advance, I want to make sure that we do everything we can to ensure that our schools are places of real learning. Our budget problem is dire but after years of cutbacks, I am determined to enhance our public schools so that our citizens of the future have the skills, the zest and the character to keep California up among the best. ...

"It is sobering and enlightening to read through the inaugural addresses of past governors. They each start on a high note of grandeur and then focus on virtually the same recurring issues—education, crime, budgets, water.

"I have thought a lot about this and it strikes me that what we face together as Californians are not so much problems but rather conditions, life's inherent difficulties. A problem can be solved or forgotten, but a condition always remains. It remains to elicit the best from each of us and show us how we depend on one another and how we have to work together."

The complete transcript of Brown's remarks is available at www.gov.ca.gov.

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Business Resources

E-Verify Overview. U.S. Citizenship and Immigration Services, Department of Homeland Security. January 13, January 21, Webinar. (202) 443-0138.

VocEx 2011. International Association of Rehabilitation Professionals. January 29, Los Angeles. (650) 738-4680.

Spotlight on High Technology. Licensing Executives Society (U.S.A. and Canada), Inc. February 10–11, San Jose. (703) 836-3106.

Aging in America Conference. April 26–30, San Francisco. (415) 974-9638. Preventing Workplace Fraud Webinar On

Preventing Workplace Fraud Webinar On Demand. CalChamber. (800) 331-8877.

International Trade

U.S. Export Trade Mission to Korea.

Korea Trade-Investment Promotion Agency, Los Angeles (KOTRA). January 11–12, Korea International Exhibition Center (KINTEX). (323) 954-9500.

High Speed Rail Seminar. Japan International Transport Institute, USA. January 14, Los Angeles. (202) 833-9769.

Green Aviation Seminar. Japan External Trade Organization (JETRO). January 20, San Francisco. (415) 392-1333.

High Tech Mission to India. U.S. Department of Commerce. February 6–11, New Delhi, Bangalore, Mumbai. (202) 482-3663.

The Americas Business Forum. March 2–3, Los Angeles. (213) 580-7500.

Complying with U.S. Export Controls. U.S. Department of Commerce, Bureau of Industry Security. March 24–25, San Diego. (858) 467-7040. Asia Pacific Business Outlook 2011. University of Southern California/U.S. Department of Commerce, U.S. Commercial Service. March 28–29, Los Angeles. (213) 740-7130.

Labor Law

HR101: Intro To HR Administration. CalChamber. January 11, Costa Mesa; January 19, San Jose. (800) 331-8877.

HR201: Labor Law Update Seminar. CalChamber. January 10, Glendale; January 12, Costa Mesa; January 13, San Diego; January 20, San Jose; January 21, Emeryville. (800) 331-8877.

Family Medical Leave Act/California Family Rights Act Seminars. CalChamber. January 12, Costa Mesa; January 13, San Diego. (800) 331-8877.





Wet Season Raises Hopes of More Water as Reservoirs Exceed Time-of-Year Average

Multiple Dry Years Still Leave Many Reservoirs Below Capacity

Early measurements of California's snowpack are in and the results raise hopes for water users around the state. The mountain snowpack, a key source of water supply throughout the year, is at about twice its average volume of water for this time of year following a large storm that blanketed California with precipitation in late December.

That storm dumped a deep layer of snow over the state's high country, bringing snowpack levels to above 50-60 inches, the highest in 17 years.

Snowpack High

As of January 3, the Northern statistical mountain snowpack was measured at 174 percent of average while the Central section held 198 percent of average snowpack and the Southern section held onto 277 percent of its average snowpack.

The statewide mountain snowpack average is about 212 percent of normal, providing a stream of snowmelt throughout the warmer months that will replenish the state's reservoirs.

One such reservoir is Lake Oroville, which depends heavily on spring and summer snowmelt for recharge, and has not reached its 3.5 million acre-foot capacity since 2003.

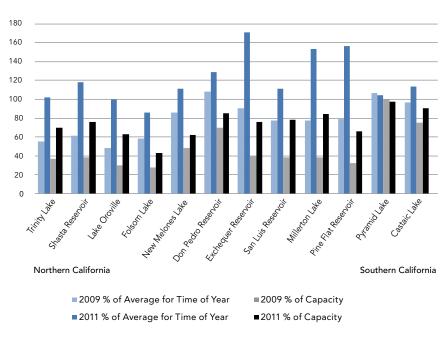
Reservoir Levels

Heavy rains have also refilled reservoirs around the state, bringing levels above 100 percent of seasonal average in many cases.

- Oroville, the main reservoir of the State Water Project (SWP), is already at 99 percent of normal, holding more than 2.22 million acre-feet of water.
- Lake Shasta, the main reservoir of the Central Valley Project (CVP), is at 118 percent of normal, with more than 3.45 million acre-feet of water.
- Folsom Lake, also part of the CVP system, is at 86 percent of normal with about 415,950 acre-feet of water.

The positive news follows several consecutive years of below-average precipitation and ongoing drought conditions. In response, the SWP

California Reservoir Capacity (Low 2009, High 2011)



Source: Department of Water Resources, December 22, 2009, January 5, 2011

and CVP dramatically reduced water allocations in 2008 and 2009 to as low as 15 percent of normal.

The economic harm was unmistakable when these shortages were combined with pumping restrictions stemming from environmental concerns, as Central Valley farmers were forced to fallow crop land and unemployment reached as high as 30 percent in some rural counties.

Water Allocations

The Department of Water Resources (DWR) issued a press release on December 28, 2010, just days after the official start of the winter season, indicating that water allocations could climb above 50 percent of requested deliveries depending on "weather between now and spring."

With the rainy season theoretically in its beginning, there is significant hope that supplies will edge closer to meeting demand around the state.

"This boosts our hopes that we will have an adequate water supply for our cities and farms as we continue to shake off effects of the 2007–2009 drought," said DWR Director Mark Cowin.

Urban users in Southern California have something else to be happy about—precipitation in the Colorado River Basin is at about 150 percent of average for this time of year, allowing exports to increase and reservoirs along the river to refill.

California's largest water agency, the Metropolitan Water District of Southern California (MWD), presently holds more than 1 million acre-feet annually in prioritized water allocations from the Colorado River.

Due to a complex interstate and international agreement that includes seven U.S. states and Mexico, the contentious politics around use of Colorado River resources can result in

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Workplace Notice

Private sector employers (including labor organizations) whose workplaces fall under the NLRA would be required to post the employee rights notice where other workplace notices typically are posted, according to the NLRB.

If an employer communicates with employees primarily by e-mail or other electronic means, the notice would be posted electronically as well. The notice would be available from the agency's regional offices and also could be downloaded from the NLRB website, the NLRB said in a news release.

The NLRB is proposing that the notice to employees shall be "at least 11 inches by 17 inches in size, and in such colors and type size and style as the Board shall prescribe. Employers that choose to print the notice after downloading it from the Board's website must print in color."

Enforcement

The NLRB has proposed treating an employer's failure to post the notice as:

- an unfair labor practice under the NLRA; and
- evidence of an employer's unlawful motive in cases involving such allegations.

The NLRB will allow an employee to delay the six-month statute of limitations to report a complaint under the NLRA until the employer posts the notice.

Petition

The notice originally was proposed in a petition to the NLRB by Charles Morris, professor emeritus of law, Southern Methodist University, in 1993. Similar postings already are required by a number of other laws, according to the NLRB, including the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Occupational Safety and Health Act,

the Americans with Disabilities Act, and the Family and Medical Leave Act.

NLRB member Brian Hayes dissented from the issuance of the proposed rule, stating the NLRB lacks the statutory authority to issue or enforce the rule.

Public Comments

The 60-day comment period for the proposed rule began on December 22, 2010. The NLRB is inviting comments on all aspects of the proposed rule, including the issue of the board's authority raised by the dissent.

Comments on the proposed rule should be submitted either electronically at *www.regulations.gov* or by mail or hand delivery to Lester A. Heltzer, Executive Secretary, NLRB, 1099 14th Street NW, Washington, D.C. 20570.

A fact sheet and more information about the proposed rule are available at *www.nlrb.gov*.

Staff Contact: Jennifer Barrera

Wet Season Raises Hopes of More Water as Reservoirs Exceed Averages

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MWD receiving only about 550,000 acrefeet of water or less in dry years.

Weather Patterns

Still, water supplies in California are notoriously volatile given the ratios of average demand to average supply and the unpredictable weather patterns upon which the entire water economy relies.

"We've come to realize that not only are California's winters very variable; they can also change very quickly from a significant winter to a so-so winter," said Frank Gehrke, chief of California's Cooperative Snow Surveys Program. Gehrke has been measuring California's snowpack since 1981.

"It's quite a good start," Gehrke said, "but we don't know how much it's going to rain through March, especially it being a La Niña this year."

The La Niña effect is associated with cooler-than-normal water temperatures in the Equatorial Pacific Ocean, above-average precipitation in the Pacific Northwest and drier conditions in the Southwest. Predicting the effects on Northern California is difficult.

Even as reservoirs continue to fill high

relative to yearly averages, many remain quite low in absolute terms—consecutive years of dry weather depress average reservoir levels, artificially biasing water measurements upward, creating mistaken perceptions about the amount of water available for use.

Drought Executive Order

As of former Governor Arnold Schwarzenegger's last day in office on January 3, no declaration signaling an end to the drought was declared. An official end of the drought begun via Executive Order S-06-08 would require newly sworn Governor Jerry Brown to issue another executive order to end it.

"Our situation when it comes to water is so precarious that we should probably remain in a drought situation until we can figure out how we can better deliver water to the entire state," said Sandy Cooney with the California Natural Resources Agency.

Water Bond

The Legislature and the Governor won a hard-fought victory in 2009 to place on the ballot an \$11.1 billion bond that would have provided for construction of new storage and conveyance facilities. Last year, however, lawmakers pulled the bond measure off the ballot, opting to take it to voters in 2012 due to political concerns.

"After discussion with the Governor and legislative leadership, it was kind of the consensus, given the contentious political climate over the budget and a lot of other political issues floating around... to wait until the message on the water bond could be heard by voters," said Jim Earp of the Alliance for Jobs, a coalition of contractors and construction workers.

Action on water is still needed, as reservoirs continue to drain slowly. In absolute terms, Lake Oroville is at only 63 percent of its maximum capacity, even while that figure represents 99 percent of its annual average.

Water managers use the two very different statistical measures—percent of capacity and percent of average—for perspective and context in their analyses. Reservoirs rarely fill to 100 percent of capacity.

Lake Shasta remains at only 76 percent of its 4.5 million acre-foot capacity, while Folsom Lake is at only 43 percent of its 977,000 acre-foot capacity. Staff Contact: Valerie Nera



Sunrise Powerlink Transmission Line Breaks Ground for Clean Energy

The long-awaited groundbreaking for the 117-mile Sunrise Powerlink transmission line took place last month in Southern California.

Spanning from Imperial County to San Diego, the 500-kilovolt transmission line will have the capacity to deliver enough clean energy to power 650,000 homes and is expected to create approximately 2,000 direct jobs.

CalChamber Support

For the last three years, the California Chamber of Commerce has been actively advocating approval of this project through public education efforts and testimony before regulatory bodies, including the California State Park and Recreation Commission, California Public Utilities Commission and the U.S. Department of Energy.

The Sunrise Powerlink transmission line would carry solar energy from solar collectors in the desert to San Diego.

The construction of the Sunrise Powerlink transmission line will help facilitate the development of renewable



energy projects such as solar, wind and geothermal located in the Imperial Valley, by providing a new transmission outlet to move the electricity produced from these projects to population centers.

The development of new renewable energy projects will create jobs and economic growth in the Imperial Valley. In fact, San Diego Gas & Electric estimates the Sunrise Powerlink will

create 400 to 500 direct construction jobs and an additional 1,500 permanent jobs for ongoing maintenance and operation of the transmission line.

Multiple Reviews

The project underwent a five-year environmental review and permitting process, and has received approval by the California Public Utilities Commission, the Bureau of Land Management in the U.S. Department of the Interior and the U.S. Forest Service in the U.S. Department of Agriculture. With project construction having begun in December, the line will begin service in 2012.

Forecasts show that by later this year, the San Diego region will demand more power than can be generated locally or imported over existing transmission lines.

Until recently, no new power plants has been built in San Diego for nearly 50 years, and the last new transmission line like the Sunrise Powerlink was built in 1983. Since that time, the demand for energy has doubled—straining existing infrastructure to the limit.

CalChamber.

calbizcentral.

Have to make a decision related to employees?

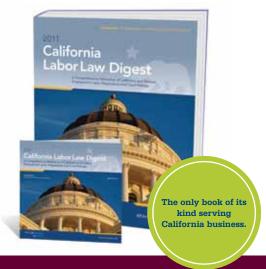
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