

ALERT

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Health Care Tax Law Fix Wins Passage in Assembly



SUPPORT

the Assembly.

The bill, **AB 36 (Perea; D-Fresno)**, conforms California with federal law regarding the taxable status of health care coverage for an adult child up to the age of 26, as well as payments or reimbursements made by an employer for an employee's adult child.

A California Chamber of Commerce-supported bill to remove the state tax on health care coverage for certain adult children has passed

The federal Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act, both passed in March 2010, allowed children up to the age of 26 to remain on their parents' health care plans.

The federal government also amended the Internal Revenue Code to reflect that the value of the coverage provided for these adult children as well as any payments/reimbursements made by the employer for the medical expenses of such children is not taxable income to the parent.

Last year, California legislation expanded medical coverage to dependents
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Chevron CEO to Speak at CalChamber Business Summit



John S. Watson

John S. Watson, chairman and CEO of Chevron Corporation, will be a featured morning speaker at the California Chamber of Commerce Business Summit on June 1 in Sacramento.

The day-long summit marks its 24th anniversary this year, offering business owners, CEOs, public affairs staff, local chamber of commerce staff, board members, committee members and many more a look at current policy issues and actions needed to promote certainty for businesses in today's uncertain economy.

John S. Watson

Watson joined Chevron in 1980 as a financial analyst, holding financial, analytical and supervisory positions before being elected president of Chevron Canada Ltd. in 1996.

In 1998, he was elected a vice president of the corporation, with responsibility for strategic planning and mergers and acquisitions. He led the company's integration effort in 2000 following the Chevron-Texaco merger and then became the corporation's chief financial officer.

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European Union Ambassador Comments on World Economic, Political Developments



Photo by Megan Wood

European Union Ambassador João Vale de Almeida (right) answers questions on the European Union's goals, organizations and concerns at a CalChamber International Luncheon Forum on March 9. CalChamber President and CEO Allan Zarembert (left) serves as session moderator. Story on Page 5.

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Labor Law Corner

Non-Paid Internship Must Meet Specific Federal/State Criteria



Dale Louton
HR Adviser

Our vice president of engineers would like to hire an intern, someone in college working toward an engineering degree, to do some testing projects for about 3-6 months. Can this person be an unpaid intern or is minimum wage required?

Your question strongly indicates that this individual will be an employee and should be paid at least minimum wage, which is \$8 per hour.

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Criteria for Unpaid Internship

The U.S. Department of Labor (DOL) has adopted six criteria to determine if an individual can be classified as an unpaid intern and not an employee.

The State of California Division of Labor Standards Enforcement (DLSE) uses the same tests in making the distinction between an unpaid intern and an employee who must be paid minimum wage.

- The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school;
- The training is for the benefit of the trainees or students;
- The trainees or students do not displace regular employees, but work under close observation;
- The employer derives no immediate advantage from the activities of trainees or students, and, on occasion, the employer's operations may be actually impeded;
- The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and
- The employer and the trainees or

students understand that the trainees or students are not entitled to wages for the time spent in training.

"Intern" is a loosely used term, but for a student to qualify for a non-paid internship, the above criteria must be used in analyzing the position.

Limited analysis based upon your question seems to show that a student is wanted, not for educational purposes, but to fill a testing position for 3 to 6 months. This person should be hired as an employee and paid at least the minimum wage.

Opinion Letters

DLSE has an opinion letter 2010.04.07 about Educational Internship Program that in 17 pages covers this subject. The DOL also covers this subject in Opinion Letter FLSA2004-5NA.

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-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Solutions for Leaders That Will Drive Performance. Wilcox Miller & Nelson. March 16, Sacramento. (916) 977-3700.

Workers' Compensation Legislative Day. Workers' Compensation Action Network, California Coalition on Workers' Compensation, CalChamber, California Manufacturers & Technology Association. April 4-5, Sacramento. (916) 554-3467.

Aging in America Conference. April 26-30, San Francisco. (415) 974-9638.

International Trade

Berkeley Asia Business Center Conference 2011. UC Berkeley Haas School of Business. March 22, Shanghai. (510) 643-6883.
Chile Investment Opportunities. Chilean

Economic Development Agency (CORFO). March 23, Davis.

U.S.-Balkans Business Summit.

Maryland Office of Secretary of State, Maryland Department of Business and Economic Development, US-Balkans Business Alliance. March 23-24, University of Baltimore, Maryland. (410) 459-8644.

Your Bridge to Europe: Doing Business in Germany. German American Business Association. March 23, Palo Alto. (650) 386-5015.

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,

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Little Hoover Report Underscores Depth of Public Pension Fund Crisis

California's public pension systems need immediate reforms in order to be sustainable, a bipartisan, independent state commission has concluded.

Public Pensions for Retirement Security, a report of the Little Hoover Commission, found that without reforms, "Pension costs will crush government."

The commission report commented that in another five years, "when pension contributions from government are expected to jump and remain at higher levels for decades in order to keep retirement systems solvent, there will be no debate about the magnitude of the problem."

Findings

The commission also found that:

- **"The math doesn't work."** In addition to investment losses in 2008–09, other factors contributing to "an unsustainable pension environment" include ballooning pension liabilities as the minimum retirement age has dropped to 55 and people live longer.

Increases have made state and local government pensions "the most generous in the country." Relying on high fund

returns and "an aggressive investment strategy" has meant "employers and employees also have failed to contribute sufficiently," the commission said. "Today, the state's largest pension systems are dangerously underfunded."

- **"The system lacks discipline."** The commission noted that the pension system is regarded as deferred compensation "the perceived tradeoff of earning a lower salary in the public sector in exchange for a good retirement package." When aggressive investing by the retirement systems fail to meet system needs, taxpayers are left facing all the risk, the commission said.

The commission warned that when the market recovers, "history would suggest that. . . the pressure from employees will return to ramp up pension formulas and undo any reforms being made today."

- **"The system lacks oversight and accountability."** The commission pointed out that since 2008, fewer than 30 of the 1,500 local public agencies in the CalPERS network (the largest pension plan in the country) have adopted a lower level of benefits for new hires. Nearly

200 public agencies in CalPERS continued to increase retirement benefits for current workers, even as pension portfolios shrunk and tax revenues dropped.

The commission pointed out that the lack of uniformity clouds transparency, invites mischief and abuse, such as pension "spiking," creates a "compensation arms race" among communities and "delegates complicated decisions to often inexperienced" local officials.

Addressing Pension Liabilities

The commission recommended reforms to address current and future pension liabilities, including a "hybrid" pension model that combines a lower defined-benefit pension formula with an employer-matched and risk-managed defined-contribution plan.

The commission also suggested that the state explore extending Social Security old-age benefits to uncovered state and local employees, as is the case with the federal workforce.

The full report is available on the Little Hoover Commission website at www.lhc.ca.gov.

CalChamber-Sponsored Seminars/Trade Shows

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Los Angeles. (213) 740-7130.

Foreign Direct Investment Opportunities.

Monterey Bay International Trade Association. March 31, Monterey. (831) 335-4780.

Peru Moda 2011. Trade and Investment

Office of Peru, Los Angeles. April 28–30, Lima, Peru. (213) 632-1951.

Peru Gift Show 2011. Trade and Investment Office of Peru, Los Angeles. April 28–30, Lima, Peru. (213) 632-1951

IBAglobal Conference & Expo. Pacific Palms Hotel & Conference Center. May 4–5, City of Industry. (702) 506-0833

Futurallia Kansas City 2011. El Camino College Center for International Trade Development. May 18–20, Kansas City, Missouri. (310) 973-3173.

Labor Law

Exempt – When You've Properly Classified. CalChamber. April 14, Webinar; April 25, On Demand. (800) 331-8877.

Pregnancy Disability Leave and Family Medical Leave Act/California Family Rights Act 201. CalChamber. On Demand. (800) 331-8877.



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DIANE MILLER
PRESIDENT
WILCOX, MILLER & NELSON, SACRAMENTO

State ‘Card Check’ for Farm Workers Wins Approval from First Committee



OPPOSE

approval this week from a Senate policy committee.

SB 104 (Steinberg; D-Sacramento) essentially eliminates the secret ballot election and replaces it with the submission of representation cards signed by more than 50 percent of employees, thereby leaving employees susceptible to coercion and manipulation by labor organizations.

SB 104 is similar to SB 789 (Steinberg; D-Sacramento), which the CalChamber designated as a “job killer” bill in 2009. SB 789 was vetoed by Governor Arnold Schwarzenegger.

‘Majority Signup’

California’s Agricultural Labor Relations Act, modeled on the National Labor Relations Act, affords agricultural employees the opportunity to select, or to refrain from selecting, a particular union as their collective bargaining representative through a formal and secure secret ballot election.

SB 104, however, allows unions to bypass secret ballot elections under an alternative “majority signup” procedure. Under SB 104, a union would be installed

A California Chamber of Commerce-**opposed** proposal seeking to limit agricultural employees’ ability to make their union choice in a private secret ballot won

as a bargaining unit’s representative merely by submitting a petition to the Agricultural Labor Relations Board (ALRB) along with representation cards signed by a majority of affected employees and designating that union for that purpose.

Unlike the current process, which guarantees that employees ultimately express their true sentiments about unionization in the tightly controlled setting of a supervised secret ballot election, this new procedure provides no safeguards to ensure the representation cards really indicate the employees’ free, uncoerced and current choice.

SB 104 specifically provides that it is lawful for the union to complete the card for the employee and just have the employee sign. Moreover, SB 104 will allow the certification of a union based on representation cards signed by employees up to a year before the union submits them to the ALRB. With no provision for allowing employees who have changed their minds to revoke their cards, this process will not guarantee that the cards when submitted reliably indicate employees’ then-current preferences.

Disparate Penalties

Finally, SB 104 creates a huge disparity in the remedies provided for unfair labor practices committed by an employer versus unfair labor practices committed by a union.

Under SB 104, if an employer is charged with interfering, coercing, or discriminating against an employee

through the exercise of his/her rights to unionize, the charge will be elevated to priority level and take precedence over any other case filed in that ALRB office.

Thereafter, if the employer is found by the ALRB to have committed an unfair labor practice, the ALRB can issue a statutory civil penalty against the employer in an amount of up to \$20,000 per violation.

No such comparable treatment or penalty is provided where a union is charged with and found to have committed an unfair labor practice.

This proposed treatment of an unfair labor charge against an employer is significant, as it is not only one-sided, but completely alters the nature of the remedies traditionally awarded by the ALRB.

As set forth in Labor Code Section 1160.3, the current available remedies are essentially the same regardless of whether the guilty party is the employer or union, and are designed to make the employee whole, not to penalize the employer and/or create a windfall for the employee.

Key Vote

SB 104 passed the Senate Labor and Industrial Relations Committee on a March 9 party-line vote of 5-2.

Ayes: Lieu (D-Torrance); DeSaulnier (D-Concord); Leno (D-San Francisco); Padilla (D-Pacoima); Yee (D-San Francisco).

Noes: Wyland (R-Escondido); Runner (R-Antelope Valley).

The bill will be considered next by the Senate Appropriations Committee.

Staff Contact: Jennifer Barrera

Chevron CEO to Speak at CalChamber Business Summit

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In 2005, he was elected president of Chevron International Exploration and Production, with responsibility for the company’s exploration and production activities outside North America. He was elected executive vice president for strategy and development in 2008 and assumed his current position on January 1, 2010.

Watson is the chairman of the board of directors and the executive committee of

the American Petroleum Institute.

A native Californian, Watson earned a bachelor’s degree in agricultural economics from the University of California, Davis, and a master’s in business administration from the University of Chicago.

Early Bird Rates

Attendees who register for the Business Summit by April 29 qualify for

a savings of at least 20 percent.

The two-day registration package, including Summit with Host Reception and Host Breakfast, is \$220 now, \$275 after April 29. Other registration options will be available.

United Healthcare is again the major sponsor of this year’s Summit.

Staff Contact: Danielle Fournier

European Union Ambassador Comments on World Economic/Political Developments



**Ambassador
João Vale de Almeida**

Cooperation between the European Union and the United States can only help the two entities deal with similar global economic problems, the E.U. ambassador told a California Chamber of

Commerce audience this week.

E.U. Ambassador to the United States João Vale de Almeida presented his perspectives on E.U. relations with the U.S. in response to questions from CalChamber President and CEO Allan Zaremberg and other audience members at the CalChamber-hosted International Luncheon Forum on March 9.

Economic Competition

The ambassador commented that as older industrialized societies, the E.U. and the U.S. face competition from the economic emergence of other countries around the world.

On one hand, he said, this might

provide a challenge to E.U. and U.S. companies due to other countries' low manufacturing and labor costs. More important, however, is that the rise of other economies will open new markets, create new consumers and lead to democratization, he said.

"The rising of countries like China, Brazil, India and others is a good thing. This means millions of people coming out of poverty...and millions of people becoming consumers," said Ambassador Vale de Almeida.

But he also warned that these emerging countries will have to share the responsibilities of other world powers and ensure that the rule of law is preserved, markets are open to all and intellectual property is safeguarded.

Debt/Entitlement

Another area of commonality is the problem of rising debts and entitlement costs. The E.U. recently had to take emergency measures to rescue its own member-states Greece and Ireland from economic collapse. The ambassador said that Western countries are going to have to make the difficult reforms of entitlements such as pensions, like the

E.U. is doing now, because the status quo will not work.

"We need to make reforms, very tough, very difficult ones. You will go on seeing demonstrations in European capitals," stated the ambassador. "People are angry; I understand. People feel that these are their entitlements; I understand that as well. But the question is simple—either we solve it now or our grandchildren will have a bigger problem."

North Africa

In regards to the political unrest in North Africa, Ambassador Vale de Almeida said he was happy with the overall trend of the people striving for more freedoms and democracy. "These people are trying to join our camp," he commented. However, he condemned the use of violence by all sides.

The E.U. and the U.S. must continue to cooperate in dealing with the situation, especially in preventing countries like Libya from becoming a failed state, he said.

Staff Contact: Susanne Stirling

CalChamber

2011 Business Summit

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Experts Say California Water Management in Dire Need of Long-Term Major Reforms

For the first time in 40 years, independent experts have collaborated to produce a long-term view of the water challenges facing California.

The state's water management system is deteriorating and only a broad, integrative approach will reverse the decline, experts from the University of California (UC), Davis, the Public Policy Institute of California (PPIC), UC Riverside, UC Hastings College of the Law, and Stanford University concluded in a book published last month.

Assessment

In *Managing California's Water: From Conflict to Reconciliation*, these experts urge a more comprehensive approach to meeting the growing demand for reliable water supply, healthy ecosystems and flood protection.

"Our water policies were made for historical problems and have not kept up with changes in our society and economy, or tremendous declines in native fish species. We continue to fall behind," said co-author Jay Lund, a UC Davis professor of environmental engineering, director of the UCD Center for Watershed Sciences and an adjunct fellow at PPIC.

Nearly 80 percent of the state's native fish species are endangered or extinct, and efforts to stop the declines are threatening water-supply reliability and flood management.

Furthermore, a major weakness identified in the report is the fragmentation of the state's water system. Hundreds of local and regional agencies separately manage water supply, quality, floods and habitat.

Recommendations

Instead of fragmenting the water system, the experts suggest creating regional stewardship authorities to coordinate functions, avoid confusion and missed opportunities.

Concerning species conservation efforts, the book's authors provide several strategies to improve entire ecosystems. Rather than focusing on a single species at a time, the experts suggest removing or pushing back levees to promote seasonal flooding, reducing contaminants, limiting introduction of invasive species, improving environmental performance of some dams and removing others altogether.

Another key recommendation is to incorporate a wider range of tools to manage water supply, quality and flooding, beyond the current system of levees, dams, conveyance facilities and treatment plants.

Additional tools include:

- **Urban conservation.** Reducing water use to about 15 gallons per person a day (30 percent below 2000 levels) would significantly reduce urban demand

for exports from the Sacramento-San Joaquin Delta.

- **Groundwater banking.** Expanding underground storage can be much more cost-effective than building new surface storage. Groundwater banking can stretch available water supplies and replace storage lost due to a shrinking Sierra Nevada snowpack.

- **Water transfers.** Buying and selling water is an equitable way to accommodate changing demands and compensate water-rights holders, the experts argue.

- **Pollution management.** Runoff from farms, construction sites, urban streets and gardens is not well managed. Cap-and-trade programs could lower the costs of implementing standards for pollutant discharges.

- **Flood management.** Flood risks are high and growing, and investment has been inadequate to maintain flood-protection infrastructure. Land-use planning should focus on limiting new development in flood-prone areas, improving building codes and expanding flood insurance requirements. Higher fees for properties benefiting from flood protection would bolster the state's underfunded system.

A PDF file of the book and related resources are available at <http://watershed.ucdavis.edu>.

Staff Contact: Valerie Nera

Health Care Tax Law Fix Wins Passage in Assembly

From Page 1

up to the age of 26 in order to match the federal health care law. The state law, however, did not adopt the federal tax rules for adult child medical coverage or medical payments.

As a result, the fair market value of medical coverage provided to adult children from 19 to 25 years of age is now taxable income in California, except if other exclusions that existed in the law before the adoption of the state law apply. The exceptions are:

- The child is (a) under the age of 24;
- (b) a full-time student in the calendar

year; (c) maintains the same principal residence as the parent for at least half of the year; and (d) receives more than one-half of his/her annual financial support from the parent; or

- The child is permanently and totally disabled, regardless of age.

Due to this glitch in the law, businesses and employees in California are faced with the administrative, and financial burden of determining the fair market value of the insurance coverage or medical payments provided solely for the adult child in order to properly calculate the state taxes owed.

AB 36 seeks to resolve this discrepancy between California and federal tax law, thereby relieving California businesses and employees from this unnecessary cost. Conforming to federal law and treating the value of the adult health care coverage as non-taxable income would be an income tax reduction for employees, and a payroll tax reduction for employers.

AB 36 passed the Assembly on a vote of 74-0 on March 3. It now awaits assignment to a policy committee in the Senate.

Staff Contact: Jennifer Barrera



“By working together and encouraging change in Sacramento, we can restore the California dream for ourselves, and for our children and generations of Californians to come.”

Laree M. Renda
Executive Vice President,
Chief Strategist and Administrative Officer
Safeway, Inc.
2010 CalChamber Chair

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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.

Advocacy Return on Investment

Working to create certainty for business, limit regulation and reduce costs

2010 Sample Return on Investment for CalChamber Members

State Government-Run Health Care Stopped (SB 810)	\$10 Billion Saved
Increased Income Tax Burden Stopped (AB 1836)	\$6.6 Billion Saved
Repeal of Net Operating Loss Stopped	\$4.575 Billion Saved
Tax on California Jobs Stopped (AB 1935)	\$2.1 Billion Saved
Industry-Specific Targeted Tax Stopped (AB 656)	\$2 Billion Saved
Climate Change Tax Increase Vetoed (AB 1405)	\$1.28 Billion Saved
Increased Workers' Compensation Costs Stopped (AB 1994)	\$500 Million Saved
Health Insurance Mandates Vetoed (AB 1825, AB 1600, SB 220, SB 961, SB 1104)	\$405 Million Saved
Gutting Enterprise Zone Program/ Increased Taxes Stopped (SB 974)	\$178 Million Saved
New Restrictions Increasing Health Care Premiums, Limiting Choice Vetoed (SB 890)	\$131 Million Saved
Increased Environmental Penalties Defeated (AB 846)	\$110 Million Saved
Increased Health Premium Costs Stopped (AB 1826)	\$27 Million Saved
Higher Employer Property Tax Stopped (AB 2492)	\$21 Million Saved
Increased Pesticide Tax Vetoed	\$700,000 Saved
Excessive Mandated "Code of Conduct" Vetoed (SB 1231)	\$350,000 Saved
Increased High-Speed Rail Costs Vetoed (AB 619)	\$50,000 Saved
Total Definable Return	\$27.928 Billion

Return Per California Employee

\$2,451

Other Savings from Legislation Defeated

New Liability for Hiring Decisions Stopped (AB 2727)	\$70,000 per lawsuit
Increased Agricultural Costs Vetoed (SB 1121, SB 1474)	\$31,500 per agricultural employee
Expanded Employer Liability Stopped (AB 482)	\$10,000 maximum penalty per employee
Criminalizing Legitimate Wage Disputes Stopped (AB 2187)	\$10,000 maximum penalty per employee



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