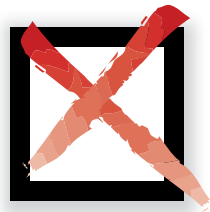


ALERT

VOLUME 37, NUMBER 10 • MARCH 25, 2011



Anti-Business Proposals Rise Again in New Session



OPPOSE

again this year.

Following is a partial list of anti-business bills introduced so far this year. The CalChamber **opposes** these proposals.

Legislation that will increase costs for California employers, thereby hurting their ability to compete in the global marketplace and provide jobs has been introduced

● **AB 10 (Alejo; D-Watsonville) – Automatic Minimum Wage Increase.** Increases the cost of doing business for employers in California by raising the state minimum wage to \$8.50 per hour with an automatic annual indexing of the minimum wage for every year thereafter according to the percentage of inflation.

● **AB 22 (Mendoza; D-Norwalk) - Employment: Credit Reports.** Unfairly limits employers' ability to use consumer credit reports for legitimate employment purposes, unless the information in the report is "substantially job-related." The

See Anti-Business: Page 6

Bill Banning Use of Credit Reports for Employment Passes Assembly Committee

A bill banning most employers from using consumer credit reports for employment purposes passed an Assembly policy committee this week.

The California Chamber of Commerce **opposed AB 22 (Mendoza; D-Norwalk)**, which unfairly limits employers' ability to use consumer credit reports for legitimate employment purposes, unless the information in the report is "substantially job-related." The bill narrowly defines that term to refer only to managerial positions; employees of the state Department of Justice; law enforcement; certain financial institutions; or a position for which a report is required by law.

Measuring Reliability

Employers normally use credit reports when narrowing an applicant pool during the hiring process, CalChamber Policy Advocate Jennifer Barrera told the Assembly Judiciary Committee on March 22.

The reports provide objective information about an individual, confirming identification, employment history, collection or delinquency status, and overall management of the person's finances. These elements, Barrera said, allow employers to gauge a person's trustworthiness and overall responsibility before offering an applicant employment.

Police departments make use of credit reports for similar reasons.

See Bill: Page 6

Labor Agency Secretary Speaks at CalChamber



Photo by Megan Wood

Marty Morgenstern (second from left), secretary of the California Labor and Workforce Development Agency, meets with the CalChamber Labor and Employment Committee, chaired by Thomas Cawley (left) of Peets Coffee & Tea, Inc. on March 17. Morgenstern spoke on reorganization within the agency, the need for pension reform and expressed hope that some bipartisan agreement could be reached. From right are Tony Sabatino, committee vice chair, of Securitas Security Services U.S.A. Inc., and Doug Hoffner, undersecretary of the California Labor and Workforce Development Agency.

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Labor Law Corner

Reporting Time Pay for Termination Meeting Depends on Scheduling



Ellen S. Savage
HR Adviser

I suspended an employee and now I want to terminate her. If she comes in and is terminated during a brief meeting, how much reporting time pay do I owe her for that meeting?

Employees who report to work and are given less than their usual or scheduled day's shift normally are entitled to reporting time pay equal to half of their usual or scheduled day's shift, with a

minimum of two hours and a maximum of four hours required.

A new California Court of Appeal case, *Price v. Starbucks*, clarifies how this rule applies when an employee is called in for a meeting where she is to be terminated.

According to this new decision, the amount of reporting time pay owed will depend on whether the employee was scheduled to work that day or whether she was called in for a termination meeting on a day she was not scheduled to work.

Scheduled Day of Work

If an employee is scheduled to work on a given day and reports to work, but is terminated at the beginning (or before the mid-point) of her shift, she is owed reporting time pay equal to half of her usual or scheduled day's pay.

Thus, an employee who normally works an eight-hour day would be owed four hours of pay; an employee who normally works 7.5 hours would be owed 3.75 hours, etc.

Based on the minimum and maximum requirements, if the employee was scheduled for a three-hour shift, she would get the minimum two hours pay, and if she was scheduled for a 10-hour shift she would get the maximum four hours pay.

Day Not Scheduled to Work

If an employee is not scheduled to work on a given day but is asked to come in for a meeting (at which she is then terminated), the reporting time pay requirements are different than for those on a scheduled day of work.

The court clarified that because the

employee does not report to work with the expectation of working a scheduled shift, but rather is scheduled to attend a meeting for an unspecified number of hours, the employee is owed only two hours pay based on the minimum reporting time pay requirement.

Thus, an employee who has been suspended and taken off the schedule, and is then asked to come in for a meeting rather than for a normal day's work is owed two hours pay.

Rationale for Decision

The court of appeal in *Price v. Starbucks* made it clear that reporting time pay requirements exist to guarantee at least partial compensation for employees who are deprived of their expected amount of hours because of inadequate scheduling or lack of proper notice by the employer.

When an employee is not scheduled for any particular number of hours, but is simply called in for a meeting for an unspecified amount of time, he or she does not lose any pay because of an employer's scheduling error.

Note: If an employee does not have any set schedule, such as an employee who works on an as-needed basis, you should check with your legal counsel to see which rule to apply.

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

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CalChamber-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Business Resources

Ergonomics Workshop. State Compensation Insurance Fund. March 29, Sacramento. (916) 924-6812.

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,
See CalChamber-Sponsored: Page 7

CalChamber Calendar

International Luncheon Forum:
April 14, Sacramento
California Business Summit/Host Breakfast: June 1-2, Sacramento



New Storm Water Requirements Raise Questions on Added Costs, Scientific Basis

The California Chamber of Commerce and a coalition of business, taxpayers, and local governments are questioning the science behind new storm water permit requirements that will increase costs with no proven environmental benefits.

Costs could range from tens of thousands of dollars at small businesses and schools to hundreds of millions of dollars at large facilities owned by ports and industrial facilities, according to the coalition.

The coalition is united under the name Workable Approach to Environmental Regulation (WATER).

Thousands of California school districts, local governments, recycling facilities, truckers, manufacturers and other businesses currently comply with an Industrial General Storm Water Permit that requires them to manage storm water runoff through best management practices.

Increased Costs

The State Water Resources Control Board, however, has proposed a revised storm water permit establishing several

new requirements beyond U.S. Environmental Protection Agency mandates for these public agencies and businesses.

The coalition estimates the new numeric limits will result in hundreds of millions of dollars in additional costs with no proven environmental benefits.

In violation of California and federal law, the state water board has scheduled a March 29 hearing on the revised storm water permit and set a final comment deadline (April 18) even though the notice for the rule states that it is “currently not in its complete form.”

The coalition is urging the state water board to support an industrial general storm water permit without numeric limits. Such a permit will protect water quality while minimizing costs to the public agencies and private companies that must comply with it.

Expert Panel

The state water board convened a panel of experts to address questions about imposing “numeric limits” in storm water permits.

Calculating appropriate numeric limits requires the agency to analyze the wide variation in storm water flow conditions, and what controls can be achieved by technology at each category of facility.

The panel suggested that the board

needs to re-examine existing data sources and collect new data before it even considers imposing numeric limits.

The state water board staff acted on none of the recommendations before proposing the new permit.

The panel of experts noted: “Whether the use of numeric limits is prudent, practical or necessary to more effectively achieve nonpoint pollution control is a separate question that needs to be answered, but is outside the scope of this panel.”

State law requires that a number of factors be analyzed before development of such a regulation, including measuring its water quality benefits and calculating the cost of compliance.

The state water board staff, however, appears to have written the rules for the permit before doing the analysis.

Coalition Concerns

In addition to voicing concerns with the process the state water board has followed so far in promulgating the proposed permit, the coalition has cited several substantive concerns with the proposal itself:

- **Arbitrary numeric limits increase costs without proven water quality benefit.**

See Storm: Page 4

Workers' Comp Legislative Day Set for April 4–5

Workers' compensation costs are rising, and the Legislature is considering legislation that would compound the problem.

Employers are invited to come to Sacramento on April 4–5 to get an update on proposals and an opportunity to meet with state legislators before they have a chance to vote on bills that could drive up employer costs.

An afternoon briefing and evening reception on April 4 will be followed by an April 5 kick-off gathering and trip to the State Capitol for face-to-face meetings with policy makers and other key officials.

For more information and to register, go to www.calchamber.com/workerscompday.



“The California Chamber of Commerce is the best way businesses in California can be represented effectively through strong advocacy and communication. In my opinion, no group is more reliable.”

TED BALESTRERI
CHAIRMAN AND CHIEF EXECUTIVE OFFICER
CANNERY ROW COMPANY, MONTEREY

Storm Water Requirements Raise Questions on Added Costs, Scientific Basis

From Page 3

Requiring numeric limits will be very costly for schools, ports, cities, transit agencies, counties and employers, the coalition points out. With public agencies already facing budget deficits, the permit would mean even further cuts to vital services.

For the private sector, the added costs could mean the difference of hiring or retaining employees and expanding operations and business opportunities.

● Unsound regulation invites costly lawsuits.

By establishing arbitrary numeric limits, the permit will invite costly lawsuits to be filed against cities, counties, sanitation agencies, water treatment agencies and private companies, the coalition comments. There won't be a chance to discuss whether data really justifies enforcement, because there is strict liability, combined with mandatory penalties.

● Duplicative regulations don't take into account cumulative impacts.

The cumulative cost of regulations already is a burden for California businesses and public agencies, which are still hurting from the economic recession. In fact, the permit would duplicate many existing regulations already in place to address storm water controls.

● Prohibits cost-effective group compliance.

The existing Industrial General Storm Water Permit allows facility operators in industrially similar operations to comply with the conditions of the permit by participating in a Group Monitoring Plan (GMP). Group monitoring adds a layer of compliance review, streamlines the reporting process and significantly reduces the costs associated with regulatory compliance.

Approximately 1,600 facilities currently participate in 30 Storm Water Monitoring Groups in California. The

new draft permit, however, does not provide for GMPs and proposes to remove this cost-effective system for storm water compliance.

Better Way

Coalition members believe there is a better way to address storm water management. The coalition supports efforts to improve water quality and coalition members are willing to take reasonable and measured steps toward this end. Sudden, new, unproven and expensive programs are not appropriate at any time, especially during a period of economic recovery.

In order for WATER to support a new industrial storm water permit program, it must be predictable in terms of costs and effectiveness, gradual with no sudden cost surges and require minimal administrative and compliance costs.

Staff Contact: Valerie Nera

CalChamber Committee Hears from Product Stewardship Executive



Heidi Sanborn (left), executive director of the California Product Stewardship Council, reviews for the CalChamber Environmental Regulation Committee, chaired by John R. Shiner (right) of Holme Roberts & Owen LLP, the non-profit council's efforts to reduce waste going to landfills by encouraging an extended producer responsibility approach to the management of discarded consumer products. To Shiner's left is CalChamber Policy Advocate Robert Callahan.

CalChamber Board Examines Europe, Energy, Political Polls, Economy



CalChamber Chair S. Shariq Yosufzai (right) leads an informal question-and-answer session with European Union Ambassador João Vale de Almeida at the dinner gathering of the CalChamber Board of Directors on March 10 in San Diego.



Franklin M. "Lynn" Orr, director of the Precourt Institute for Energy at Stanford University, outlines needs, opportunities and challenges related to delivering energy and lowering greenhouse gas emissions at the CalChamber Board of Directors meeting on March 11.

Congressman Outlines Bill to Repeal New 1099 Business Reporting Mandate



Photo by Megan Wood

California Congressman Dan Lungren (R-Gold River) discusses the support for his bill to repeal the new 1099 business reporting requirement contained in the health care legislation enacted last year. At right is Daniel Faraci of the Alliance for Affordable Services, acting as host for the meeting with Lungren at the CalChamber offices on March 21.



Mike Baselice, president of Baselice & Associates, explains to the CalChamber Board of Directors the correlation between voter sentiments about the economy and election results.



Nancy Sidhu, chair of the CalChamber Economic Advisory Council and vice president and chief economist for the Los Angeles County Economic Development Corporation, describes signs of improvement in the California economy in the council's quarterly report to the CalChamber Board of Directors.

Anti-Business Proposals Rise Again in New Session

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bill narrowly defines that term to refer only to managerial positions; employees of the state Department of Justice; law enforcement; certain financial institutions; or a position for which a report is required by law.

● **AB 559 (Swanson; D-Alameda) - Undermines Judicial Discretion.** Unreasonably increases business litigation costs by limiting judicial discretion to reduce or deny exorbitant attorneys fees in fair employment and housing cases.

● **SB 104 (Steinberg; D-Sacramento) Increased Agricultural Costs.** Attempts to limit employees' ability to independently and privately vote for unionization in the workplace, by eliminating a secret ballot election and replacing it with the submission of representation cards signed by over 50 percent of the employees, which leave employees susceptible to coercion and manipulation by labor organizations.

● **SB 129 (Leno; D-San Francisco) - Employee Safety Risk.** Undermines employers' ability to provide a safe and

drug-free workplace by establishing a protected classification for employees who utilize medical marijuana.

● **SB 364 (Yee; D-San Francisco) Creates Employer Tax Credit Uncertainty.** Eliminates the incentive effect of future-enacted tax incentives by imposing a penalty on California employers who claim tax incentives if they experience a loss in employment greater than 10 percent, whether or not the reduction of employees was connected to the effectiveness of the incentive.
Staff Contact: Marc Burgat

Bill Banning Use of Credit Reports for Employment Moves Forward

From Page 1

"The U.S. Police Jobs website, as well as the California Commission [on Peace Officer Standards and Training] website, suggests that irresponsibility in financial management is indicative of problematic behavior," Barrera told the committee.

Narrow Exemptions

While AB 22 still allows some entities to use credit reports, the bill bans use of the reports in nearly all areas of the private job sector.

"[AB 22 allows] an employer to pull a credit report for a managerial position who has direct access to financial information, assets and property," Barrera said. "But what that fails to recognize is that there are numerous positions in the private sector that are non-managerial positions that



Photo by Megan Wood

CalChamber Policy Advocate Jennifer Barrera testifies against a bill banning most employers from using consumer credit reports for employment purposes.

have direct access to financial information, cash, confidential information, and assets of the employer and the public."

Thus, not only does AB 22 impede

employers from gauging the trustworthiness and responsibility of a job candidate; it also puts employers and the public's financial information at risk.

Key Vote

AB 22 passed Assembly Judiciary on a vote of 6-4 on March 22.

Ayes: Atkins (D-South Park/Golden Hill); Dickinson (D-Sacramento); Feuer (D-Los Angeles); Huffman (D-San Rafael); Monning (D-Carmel); Wieckowski (D-Fremont).

Noes: Silva (R-Huntington Beach); Huber (D-El Dorado Hills); Jones (R-Santee); Wagner (R-Irvine).

AB 22 will be considered next by the Assembly Labor and Employment Committee.

Staff Contact: Jennifer Barrera



CalChamber.

2011 Business Summit

June 1-2, 2011 | Sacramento

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Communications Expert, Political
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CalChamber Business Summit Registration Now Available

Early bird registration for the June 1–2 California Chamber of Commerce Business Summit in Sacramento is now available.

This annual forum gives businesses and local chamber of commerce leaders the opportunity to meet with peers and state policy experts to focus on priority legislative issues facing California business.

The goal of this summit is to give attendees the information they need to be active players in the legislative process, presenting the business perspective on policy issues affecting a company's bottom line. The summit program will emphasize that job creators need certainty and stability.

Speakers

- **Dr. Frank I. Luntz**, an internationally recognized communications expert, political pollster and bestselling author, will be the luncheon speaker at the summit on June 1.

His latest book, released in March, is *Win: The Key Principles to Take Your Business from Ordinary to Extraordinary*.

- **John S. Watson**, chairman and CEO

of Chevron Corporation, will be a featured morning speaker at the summit.

Breakout Sessions

Afternoon breakout sessions will give attendees the option to learn how to be effective advocates for commonsense policies that will help their businesses.

Attendees can:

- Learn how to use technology to make a difference in the shaping of state policies.
- Find out how redistricting and the top two candidates open primary reforms affect the political landscape.
- Get an update on human resource and compliance issues affecting California companies.
- Gain insight on the impact of international trade on their businesses and community.

Host Breakfast Speaker

S. Shariq Yosufzai, 2011 CalChamber chair and vice president of Chevron Corporation, will be a featured speaker at the invitation-only 86th annual

Sacramento Host Breakfast on June 2.

Sacramento business leaders host the annual breakfast and a reception the evening before to spotlight California's role in national and international commerce, and to offer 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.

Early Bird Registration

Attendees who register by April 29 qualify for savings of at least 20 percent.

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

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

Online registration and more information are available at www.calchamber.com/summit.

CalChamber-Sponsored Seminars/Trade Shows

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San Francisco. (415) 974-9638.
Small Business Resource Summit. Small Business Administration Sacramento District Office. May 26, Citrus Heights. (916) 735-1700.

International Trade

Japan Earthquake Relief Forum. Japan Society of Northern California. March 28, San Francisco. (415) 986-4383.

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.

Import/Export Workshop. U.S. Department of Commerce, Commercial Service; Citrus Heights Business Information Center. March 29, Citrus Heights. (916) 566-7011.

Foreign Direct Investment Opportunities. Monterey Bay International Trade Association. March 31, Monterey. (831) 335-4780.

Import/Export Orientation Seminar. Sacramento Regional Center for International Trade Development. April 5, Sacramento; April 19,

Roseville. (916) 563-3200.
Peru Moda 2011 and 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

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber of Commerce. May 6, Los Angeles. (213) 580-7569.

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

Clean-Tech Trade Mission to China. Monterey Bay International Trade Association. June 4–11, Jiaxing and Wuxi, China. (831) 335-4780.

Chile: Investment Opportunities in the Food Industry. Chilean Economic Development Agency (CORFO). June 6–9, Santiago, Chile.

7th World Chambers Congress. International Chamber of Commerce World Chambers Federation. June

8–10, Mexico City.
India Trade Conference. Port of Los Angeles, Network of Indian Professionals, U.S. Commercial Service, Quanta Consulting, Inc. June 23, Los Angeles. (949) 480-9466.

Labor Law

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

How to Hire Employees and Reduce Liability. CalChamber. May 12, Webinar; May 25, On Demand. (800) 331-8877.

How to Conduct Effective Performance Evaluations. CalChamber. June 9, Webinar; June 20, On Demand. (800) 331-8877.

How to Conduct Workplace Investigations. CalChamber. July 14, Webinar; July 25, On Demand. (800) 331-8877.

Workplace Safety

Heat Illness Prevention—How to Comply with New Rules. CalChamber. May 12, Webinar; May 21, On Demand. (800) 331-8877.

Learn How to Properly Classify Your Employees on April 14

Some of the largest multimillion-dollar awards of back pay by the courts have been due to employers misclassifying employees as exempt. If your company employs exempt workers and you are responsible for job descriptions and classifying employees, you will benefit from attending this webinar.



Avoid common and costly mistakes California employers make. Register for this webinar. Our employment law experts will explain:

- Exempt vs. nonexempt—what's the difference?

Plus, which employees qualify for:

- Administration exemption;
- Professional exemption;
- Computer professional exemption;
- Inside and outside sales exemption.

**CalChamber Preferred and Executive Members will receive their 20% discount*

Register now!*
"Exempt—When You've Properly Classified"
 Thursday, April 14
 Webinar
 10 a.m.–11:30 a.m. PDT
 \$189

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