

ALERT

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California Employers Paying Higher Unemployment Taxes

Federal Tax Hike Due to \$10+ Billion State UI Debt

Since January 1, California employers have been paying higher taxes because the state has not repaid money it borrowed from the federal government to pay unemployment insurance (UI) benefits.

Unless Congress takes action (which it is not expected to do), the higher tax will remain in effect through 2012 and then increase each year the state has an outstanding loan balance. California's UI Trust Fund has been insolvent since 2009. By the end of 2012, the UI Fund deficit is projected to reach \$10.7 billion, according to the California Employment Development Department (EDD).

Employers will lose 0.3% of their

federal tax credit, partially offset by the end of a 0.2% surcharge in July 2011.

The 0.3% tax credit translates into approximately \$21 per year for any employee who makes \$7,000 or more in 2012. California employers pay UI taxes on the first \$7,000 of wages per employee.

Statewide, the tax increase totals an estimated \$289.8 million in 2012 and \$615.7 million in 2013, according to the EDD *October 2011 Unemployment Insurance Fund Forecast*. This represents a loss of 0.6% of the tax credit in 2012, EDD reports.

The additional taxes paid will help offset California's federal loan balance.

See California: Page 6

CalChamber Updates FAQ on NLRA Poster Requirement



The California Chamber of Commerce has updated its questions-and-answers document about the "Employee Rights under the NLRA" poster requirement.

The updated document is available at calchamber.com/requiredposting.

The CalChamber is closely following the National Labor Relations Board (NLRB) and its decision to require employers to post a new notice, along with all the other required notices.

As previously reported, the NLRB decided to require most private-sector employers to post a new notice entitled "Employee Rights Under the National Labor Relations Act." The NLRB delayed the implementation date of this poster requirement twice because of lawsuits challenging the requirement. The current implementation date is April 30, 2012.

Many employers want to know whether they can post what often is referred to as a "counter-poster" near the new NLRA required posting. It appears that the intended purpose of the counter-poster is to explain the company's position on unions and the company's desire to remain union-free.

See NLRA: Page 3

Political Columnist Assesses National Races



Major Garrett, congressional correspondent and columnist for the *National Journal*, offers observations on the presidential candidates at the CalChamber Public Affairs Council Retreat on February 2. More photos inside.

Inside

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Labor Law Corner

Employee on Pregnancy Leave Entitled to Continued Health Benefits



Susan Kemp
Senior Employment
Law Counsel and
Helpline Manager

Must an employer pay the full amount for health benefits for a pregnant employee when she is on pregnancy disability leave (PDL)?

The employer must continue health benefits coverage as if the employee were still working.

‘Maintain and Pay’

SB 299 (Evans; D-Santa Rosa; Chapter 510, Statutes of 2011) amends California Government Code Section 12945, and went into effect on January 1, 2012.

Covered employers (employers with five or more employees) are required to “maintain and pay for coverage...” under a group health plan, for the duration of the pregnancy leave, which does not exceed four months in a 12-month period.

The continued coverage begins on the date the leave begins, and continues at the level and under the conditions that would apply if the employee was at work rather than on leave.

This means that if the employer currently pays for all health insurance coverage, the employer continues to pay all costs. If the employee is paying for all or any coverage, she continues to do so.

Pregnancy disability leave is not an automatic four months. The employee’s health care provider determines when an employee is disabled by pregnancy, childbirth or a related medical condition. Employers may require reasonable notice of the date the employee’s leave will begin and the estimated duration of the leave.

Family/Medical Leave

Employers covered by federal family and medical leave (50 or more employees) with an eligible employee (employee has worked for the employer

for 12 months, 1,250 hours in the 12 months prior to the need for leave and works at a worksite with 50 or more employees in a 75-mile radius) must maintain health benefits for only 12 weeks under the federal Family Medical Leave Act (FMLA).

If an employee is on PDL for more than 12 weeks, the employer must continue to provide the health benefits coverage for the longer period, up to the maximum of four months.

Terminating Coverage

The new law does not discuss the employer’s obligation to provide continued coverage if the employee fails to pay her share of the health insurance premium. The Fair Employment and Housing Commission is in the process of reviewing the pregnancy disability regulations, but it is unknown if this issue will be addressed in any proposed changes to the current PDL regulations.

Employers with questions related to pregnancy disability leave and continued health benefits should consult with legal counsel before taking any action to terminate health benefits coverage.

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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Home page: www.calchamber.com.*

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Business Resources

REACH Workshop. Tetra Tech.

March 27, Los Angeles. (734) 213-5057.

International Trade

World Ag Expo. California State

Trade and Export Promotion (STEP). February 14–16, Tulare. (209) 384-5892.

Visit California Outlook Forum. Tourism Board of California. February 21–23, Sacramento. (916) 319-5422.

Basics of Exporting—Webinars.

U.S. Department of Commerce.

February 22: Export Documentation;

February 23: Colombia and Panama Free Trade Agreements, Market Briefing; March 7: Introduction to Foreign Trade Regulations; March 21: Understanding Free Trade Agreements. (800) 872-8723.

Export Training Assistance Program (ETAP). Riverside County Economic Development Agency. February 22, Palm Springs; March 7, Riverside; March 21, Palm Springs; April 4, Riverside. (714) 564-5414.

CeBIT. California STEP. March 6–10, Hannover, Germany.

See CalChamber-Sponsored: Next Page



NLRA Poster Requirement: CalChamber Updates FAQ

From Page 1

Employers should be extremely cautious: Unless carefully drafted, a counter-poster may violate the NLRA and leave the employer vulnerable to an unfair labor practice charge.

Check the *HR Watchdog* blog frequently for updates on the poster requirement as it continues to be challenged in the courts.

Background

The NLRA was enacted in 1935 and regulates most private-sector labor-management relations in the United States. The NLRA excludes agricultural, railroad and airline employers. Certain small businesses may be excluded if they are not under the NLRB's jurisdiction. In addition, the NLRB has agreed to exempt the U.S. Postal Service from the new posting requirement.

In justifying the new requirement, the NLRB states that "many employees protected by the NLRA are unaware of their rights under the statute" and that the requirement to post the notice "will increase knowledge of the NLRA among employees, in order to better enable the exercise of rights under the statute."

Notice

The poster must be placed in a conspicuous place readily seen by

employees. Employers must post the notice on an intranet or Internet site if personnel rules and policies are customarily posted there. Requirements for printing the poster in languages other than English if more than 20% of employees speak that other language also are detailed.

The notice is similar to one the U.S. Department of Labor requires for federal contractors. The notice states, among other points, that employees have the right to:

- organize a union to negotiate with their employer about wages, hours and working conditions;
- form, join or assist a union;
- bargain collectively with their employer;
- discuss wages and benefits and other terms of conditions of employment or union organizing with co-workers or a union;
- strike and picket, depending on the purpose or means of the strike or the picketing; and
- choose not to do any of these activities, including joining or remaining a member of a union.

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

Small Business Exclusion

Some very small employers will not be subject to the notice requirement because they are not under the NLRB's jurisdiction.

The NLRB does not exercise jurisdiction over small businesses whose annual volume of business has only a slight effect on interstate commerce. The NLRB generally applies two standards to determine if it has jurisdiction:

- the retail standard, including home construction. The NLRB will take jurisdiction over any such employer with a gross annual volume of business of \$500,000 or more.
- the non-retail standard, which applies to most other employers. It is based on the amount of goods sold or services provided by the employer out of state ("outflow") or goods or services purchased by the employer from out of state ("inflow"). The NLRB will take jurisdiction over any employer with an annual inflow or outflow of at least \$50,000.

Small businesses that are unsure if they are under the NLRB's jurisdiction and subject to the poster requirement should consult with labor counsel.

Staff Contact: Gail Cecchettini Whaley

CalChamber-Sponsored Seminars/Trade Shows

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International Environment Expo.

California STEP. March 7-9, Shanghai, China. (310) 973-3161.

Trade Connect-CalAgX Export Training.

Port of Los Angeles. March 8-May 17, Camarillo. (310) 732-7765.

COSMOPROF Worldwide. California STEP. March 9-12, Bologna, Italy. (562) 938-5018.

GLOBE 2012. GLOBE. March 14-16, Vancouver, Canada. (800) 274-6097.

WorldBEX. California STEP and Northern California Regional Center for International Trade Development. March 14-18, Manila, Philippines and Singapore. (916) 563-3222.

China Trade Mission and Import Expo. California Asian Pacific Chamber and CalChamber. March 25-April 1,

Kunshan, China. (916) 446-7883.

Sri Lanka Expo 2012. Sri Lanka Consulate. March 28-30, Colombo, Sri Lanka. (213) 387-0214.

Labor Law

Technology and the Workplace Webinar. CalChamber. February 16. (800) 331-8877.

Recordkeeping 101 Webinar. CalChamber. March 15. (800) 331-8877.

HR 101: Intro to HR Administration Seminar. CalChamber. April 11, Sacramento. (800) 331-8877.

Hiring, Onboarding and Recordkeeping 101. CalChamber. April 12, Sacramento. (800) 331-8877.

Performance Evaluations, Discipline and Termination. CalChamber. April 12, Sacramento. (800) 331-8877.

CalChamber Calendar

Environmental Regulation Committee:

March 8, La Jolla

Water Resources Committee

March 8, La Jolla

Board of Directors:

March 8-9, La Jolla

International Trade Breakfast:

March 9, La Jolla

CalChamber Fundraising Committee:

March 9, La Jolla

Taking Your Chamber's PAC to the Next

Level: March 16, Sacramento

CalChamber Public Affairs Council Retreat

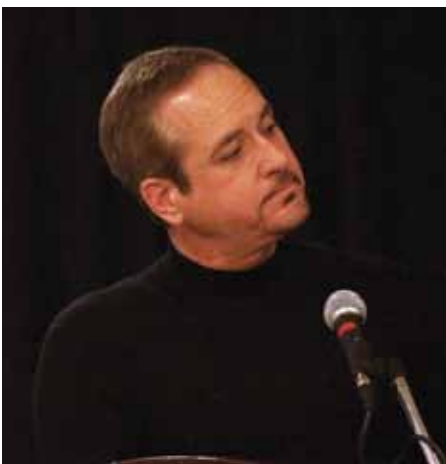
Panelists Present Insights on Roles of Media, So



Beth Miller (above), Miller Public Affairs Group, moderates a discussion on using social media to sell policy and politics by (from left) John Myers, KQED; Damian Jones, SocialVibe/Pacific Strategy Group; Becki Donatelli, Campaign Solutions/Connell Donatelli; and Steve Maviglio, Forza Communications.



Kevin Riggs (above), Randle Communications, leads a look at television campaign ads by political ad producers Fred Davis (left) and Bill Carrick.



Armando Azarloza, Axis Marketing, kicks off a discussion on the role of the Latino voter in elections by Roger Salazar, Acosta Salazar, and Luis Alvarado, Revolis.

Social Media, Latinos in Election Year Politics



Analyzing California legislative races and whether a pro-business majority is a reality are Steven Glazer (left), Glazer & Associates, and Rob Stutzman, Stutzman Public Affairs, the Democratic and Republican consultants for JobsPAC, the independent expenditure committee co-chaired by the CalChamber and the California Manufacturers and Technology Association.



Martin R. Wilson, CalChamber vice president of public affairs, oversees CalChamber public affairs and campaign activities.



NBC/Wall Street Journal pollsters (from left) Bill McInturff (Republican) and Peter Hart (Democrat) give an overview of recent polling on the mood of the American public.



The retreat concludes with a look at the many initiatives seeking spots on the 2012 ballots. CalChamber President and CEO Allan Zarembert (above) moderates the discussion by Rick Claussen (left), Goddard Claussen West, and Brandon Castillo, Bicker, Castillo & Fairbanks.



Sal Russo, chief strategist for the Tea Party Express, is the featured speaker at the retreat opening lunch.

Hiring Veterans Makes Good Business Sense

The California Department of Veterans Affairs (CalVet) is apprising business owners that they may be eligible for thousands of dollars in state and federal tax benefits and other incentives for hiring qualified veterans.

California is currently home to 1.9 million veterans. Another 30,000 men and women separate from military service and return to the state every year. With the withdrawal of troops from Iraq and Afghanistan, an additional 6,000–10,000 veterans are expected to return to California by the end of 2012.

Tax Benefits and Other Incentives Available

The federal Work Opportunity Tax Credit, for example, is based on a percentage, ranging from 25% to 40%, of qualified first-year wages. Maximum eligible credits may be as high as \$2,400 for hiring a qualified veteran and up to \$9,600 for hiring a veteran with service-connected disabilities.

Other state and federal benefits for hiring veterans may include:

- State-level hiring credits: \$37,000 (over five years) California Enterprise

Zone tax credit for employers hiring certain economically challenged employees, including veterans;

- Training funds, tuition reductions, and military pay exemptions;
- Federal Mentor-Protégé Program: Allows certain government contractor reimbursements for training/incidental costs associated with training physically challenged veterans.

According to the *Corporate Taxation Insider*, which offers more detailed information about the tax benefits of hiring veterans, the process for documenting these state and federal tax benefits is fairly straightforward for the certified public accountant or taxpayer.

In addition, systems can be set up to allow the employer to pre-screen the employees before they are hired in order to streamline the documentation process and maximize the hiring credit.

CalVet also notes that depending on the nature of their service, veterans who separated from military service after 9/11 may be entitled to five years of free health care through the U.S. Department of Veterans Affairs.

Veteran Employment: National Priority

Last year, President Barack Obama signed into law the VOW to Hire Heroes Act, which provides much-needed practical support to veterans transitioning from combat to careers. The President has publicly challenged the private sector to hire 100,000 veterans or spouses by the end of 2013.

A soon-to-be-announced White House plan aims at placing thousands of post-9/11 veterans in first responder positions and positions working to restore and protect national parks. First Lady Michelle Obama and the Vice President's wife, Dr. Jill Biden, are promoting the 100,000 Jobs Mission and the Military Spouse Employment Partnership.

Resources

Businesses interested in hiring veterans can view a step-by-step toolkit for employers on the America's Heroes at Work website at www.americasheroesatwork.gov.

California Employers Paying Higher Unemployment Taxes

From Page 1

Federal Loan Outstanding

State laws must meet certain federal requirements for employers to qualify for credits against the tax imposed under the Federal Unemployment Tax Act (FUTA).

Due to California's outstanding loan balances, the U.S. Department of Labor notified the Internal Revenue Service (IRS) and EDD late last year that California is a "credit reduction state."

Employers subject to unemployment tax laws of a credit reduction state must pay additional federal unemployment tax when filing a Form 940, according to the IRS website.

California has carried an outstanding loan balance since 2009. Therefore, the FUTA credit for California employers decreased from 5.4% to 5.1% on January 1, 2012, a 0.3% credit reduction,

according to the EDD website.

Employers will use IRS Schedule A (Form 940), Part 2, to calculate the FUTA tax, EDD reports.

State UI Fund Insolvent

The unemployment rate in California has been consistently higher than the U.S. rate for some time. In December 2011, unemployment in California was 11.1% versus 8.5% for the United States, according to EDD.

The December 2011 unemployment rate was a slight drop from the 11.3% EDD reported for November, and an improvement from the 12.5% rate recorded in October 2010.

California's UI Trust Fund has been insolvent since January 2009 due in part to the large numbers of unemployed Californians.

Also contributing to the UI fund's

insolvency has been legislation that imposed benefit increases in 2001 without including cost-saving reforms.

More Information

EDD has advised employers with questions on the FUTA credit reduction, Form 940 or Publication 15 (2011) (Circular E) *Employer's Tax Guide* to contact the IRS at www.irs.gov.

The history of the UI Fund deficit is explained in an article in the *2012 Business Issues and Legislative Guide* from the California Chamber of Commerce.

The *Guide*, free to CalChamber members, also is available for purchase through the CalChamber Store.

Staff Contact: Marti Fisher

New Commercial Recycling Regulations to Take Effect July 1

Starting July 1, businesses and public entities that generate four cubic yards or more of waste per week and multifamily units of five or more will be required to recycle.

The requirement was contained in legislation signed into law last year, AB 341 (Chesbro; D-North Coast). The purpose of this new law, as stated by the California Department of Resources Recycling and Recovery (CalRecycle), is to reduce greenhouse gas emissions by diverting commercial solid waste to recycling efforts and expand opportunities for additional recycling services and recycling manufacturing facilities in California.

CalRecycle has provided the following information about the law and offers resources to help businesses meet the recycling requirements.

Who Must Comply

- Businesses and public entities that generate four or more cubic yards of solid waste per week.
- Multifamily residential dwellings that have five or more units.

How to Comply

Businesses can take one or any combination of the following in order to reuse, recycle, compost or otherwise divert solid waste from disposal:

- Self-haul.
- Subscribe to a hauler(s).
- Arrange for pick-up of recyclables.
- Subscribe to a recycling service that may include mixed waste processing that yields diversion results comparable to source separation.

CalRecycle advises businesses to contact their local recycling coordinator to find out how to recycle in their community and if there are any specific requirements in their community (see the contacts link in the box above).

Communities may have mandatory commercial recycling ordinances with different thresholds or more specific business recycling requirements than the state law. The local recycling coordinator also may have related business opportunities and/or resources to share.

Recycling Benefits

Recycling benefits identified by CalRecycle include:

- Opportunities for businesses or multifamily complexes to save money.

Recycling Resources

- **CalRecycle Staff and Local Jurisdiction Contacts:** www.calrecycle.ca.gov/lgcentral/reports/contacts.aspx. Look up CalRecycle staff and local jurisdiction staff by city/county.
- **Mandatory Commercial Recycling Frequently Asked Questions (FAQs):** www.calrecycle.ca.gov/climate/recycling/faq.htm. A comprehensive list of mandatory commercial recycling questions and answers developed in response to stakeholder inquiries.
- **Institute for Local Government Commercial Recycling Resource Center:** www.ca-ilg.org/commercialrecycling. The institute offers a webinar series and flyer templates.

- ✓ **Webinar Series:** www.ca-ilg.org/CommercialRecyclingWebinar. Webinar topics: adopting a commercial recycling ordinance; creating effective commercial recycling education and outreach activities; creating enforcement and compliance elements for commercial recycling; addressing recycling programs at apartment complexes; and understanding mandatory commercial recycling regulations—education, outreach and monitoring requirements.
- ✓ **Template Flyers** (for business and multifamily outreach and education): www.ca-ilg.org/CommercialRecyclingFlyer. Downloadable flyer and cover letter templates with modification instructions.

- Creating jobs in California by providing materials for recycling manufacturing facilities.
- Reducing greenhouse gas emissions.
- Keeping valuable materials out of landfills.

- Creating a healthy environment for the community and future generations by recovering natural resources.
- Staff Contact: Brenda Coleman**

2012 Issues Guide Available on Website



The California Chamber of Commerce **2012 Business Issues and Legislative Guide** is available now at www.calchamber.com/businessissues. This easy-to-reference

publication includes background information synthesized by CalChamber policy advocates on issues that need attention in order to create the certainty businesses need to plan future investments in California jobs, plants or equipment.

In addition to general discussion of major issue areas critical to the economy, the **Guide** includes brief summaries of issues expected to arise in 2012.

- The **Guide** also features:
- Biographies of CalChamber policy

advocates/executive team;

- Guide to legislative process, including protocol for contacting legislators, glossary of terms;
- How to write an effective lobbying letter;
- Guide to reading a bill;
- Organization chart of the executive branch;
- Tips on talking with the media;
- Recap of CalChamber candidate recruitment/development program.

CalChamber preferred and executive members currently receiving printed copies of **Alert** will be receiving hard copies of the **Guide** in the mail. Preferred and executive members not receiving **Alert** via mail can request a hard copy of the **Guide** by emailing alert@calchamber.com.

Additional hard copies are available for purchase through the CalChamber store, www.calchamberstore.com.



LIVE WEBINAR | FEBRUARY 16, 2012 | 10 – 11:30 A.M. PST

What's your company's policy on social media use at work?

The risks and benefits associated with social media in the workplace continue to evolve, leaving many unanswered questions for employers. Join our employment law experts for our 90-minute **Technology and the Workplace Webinar** as they cover the significant issues created when employees misuse the Internet, e-mail, smartphones, blogs and social media sites. The discussion includes:

- Policy suggestions to avoid the pitfalls of social media in the workplace
- Privacy concerns and the current status of claims before the National Labor Relations Board (NLRB) about social media use



REGISTER at calchamber.com/technology or call (800) 331-8877. Mention priority code TWA.

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