

ALERT

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Climate Change Tax Gets Review in Budget Hearing

The California Chamber of Commerce voiced concerns this week about the California Air Resources Board (ARB) plan to raise revenues as part of enforcing the AB 32 greenhouse gas emissions regulation program.

Through the “cap and trade” auction, the ARB plans to permit regulated companies to meet greenhouse gas emission reduction goals by buying emission credits if need be to meet the required cap.

CalChamber President and CEO Allan Zaremberg equates the cap-and-trade auction plan to placing additional taxes on energy.

“How can legislators even be thinking about putting new taxes on gasoline at a time when higher energy costs are having a negative impact upon our economic recovery?” Zaremberg asked. “These new taxes on gas won’t even be used on improving streets and roads.”

ARB Authority?

At the Assembly budget subcommittee hearing February 29 on “Cap and Trade Auction Revenues,” CalChamber Vice President of Government Relations Marc Burgat questioned whether the

See Climate: Page 4

CalChamber, Coalition Opposing Elimination of Cal/OSHA Board

Sample Letter at calchambervotes.com

The California Chamber of Commerce and a coalition of more than 35 industry groups are opposing a proposal to eliminate the Occupational Safety and Health (Cal/OSHA) Standards Board.

The CalChamber and coalition support the board because it serves as a successful and important function of Cal/OSHA in the development of enforceable workplace safety regulations.

The board was targeted for elimination in 2011, but was saved after strong opposition from the business and labor communities.

Upcoming Budget Hearings

The elimination of the Cal/OSHA Standards Board will be the subject of budget subcommittee hearings in the Assembly on March 7 and the Senate on March 8.

Bringing Balance

Workplace safety rules should be as fair and balanced as possible, carefully considering the policy with the perspective of employees and employers. The board is able to achieve these objectives because it is independent and comprised of an appropriate number of

See CalChamber: Page 3

CalChamber Hosts Tax Roundtable Talk



Senator Lois Wolk (left), chair of the Senate Governance and Finance Committee, and Assemblyman Henry Perea, chair of the Assembly Revenue and Taxation Committee, meet with the CalChamber Tax Committee on February 16. Discussion topics ranged from tax initiatives and credits to enterprise zones and broadening the sales tax base.

Inside

State Wants Input on Workers’ Comp System: Page 3

Labor Law Corner

Tuition Aid May Not Obligate Employer to Pay for Class Attendance



Barbara Wilber
HR Adviser

If a company agrees to pay tuition for an employee who enrolls in a college course, is the company also liable for compensating the employee for class attendance?

Not all education and training classes an employee attends are considered work time even when the employer pays the tuition.

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Home page: www.calchamber.com.*

To determine whether compensation is required, the Division of Labor Standards Enforcement (DLSE) has adopted the U.S. Department of Labor standards specified at 29 CFR 785.27 through 785.31.

Each education and training situation should be reviewed on a case-by-case basis to ensure compliance with these regulations.

Criteria

Tuition assistance programs are offered routinely by companies for a variety of reasons. An employee voluntarily attending school and taking advantage of the tuition program is not working for the employer while attending the class.

The regulations state that an employee may of his/her own initiative attend an independent school, college or independent trade school after hours and the time is not considered hours worked for the employer. This holds true even when the courses are related to the employee's current position.

The regulation's general guideline for other categories of training is stated below:

Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;*
- (b) Attendance is in fact voluntary;*

(c) The course, lecture, or meeting is not directly related to the employee's job; and

(d) The employee does not perform any productive work during such attendance.

Voluntary Attendance

Questions often arise about the meaning of voluntary attendance in light of the unequal power in the employer/employee relationship.

Pursuant to the regulations, attendance is not voluntary if an employee is led to believe that working conditions or the continuance of employment would be adversely affected by nonattendance. Ensure that any literature or notices clearly indicate that the course is voluntary.

To meet the requirement of criterion (c), review the objective for the training. The regulation states that the training is directly related to the employee's job if it is designed to enable the employee to handle his/her job more effectively as distinguished from training him/her for another job, or to a new or additional skill.

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

21st Century Marketing: How to Grow Your Business. Institute for Women Entrepreneurs. March 22-23, Anaheim. (714) 480-7455.
REACH Workshop. Tetra Tech. March 27, Los Angeles. (734) 213-5057.

Labor Law

HR Boot Camp: Hiring Through Termination. CalChamber. March 7, San Diego/La Jolla. (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.

Paying and Scheduling Non-Exempt Employees Webinar. CalChamber. April 19. (800) 331-8877.

See CalChamber-Sponsored: Page 4



State Workers' Compensation Division Seeks Employer Input on Current Issues

Two state entities are holding a series of public meetings across the state to gather comments about current workers' compensation issues from employers and other stakeholders.

The open forum discussions are planned by the state Department of Industrial Relations (DIR) and the Division of Workers' Compensation (DWC). DIR and DWC also seek suggestions for improvements.

DIR Director Christine Baker and DWC Administrative Director Rosa Moran will be among the speakers at the meetings.

Topics of discussion will include:

- Providing appropriate medical treatment without unnecessary delay, the Medical Provider Network (MPN), Utilization Review (UR) or other issues.

- Enabling injured workers to return to work as quickly as medically feasible.

- Adequate compensation for permanent disabilities.

- Reducing the burden of liens on the system.
- Identifying appropriate fee schedules.
- Reducing unnecessary litigation costs.
- Assessing appropriate use of opiates and other care.
- Any other improvements needed.

Participation Encouraged

The California Chamber of Commerce would very much like to have its members participate in this process. Anyone wishing to participate should contact Jeremy Merz, CalChamber policy advocate on workers' compensation issues, in addition to registering at the DIR website.

Public Meeting Dates

The public meeting schedule consists of the following dates and times:

- **Tuesday, April 10:** West Sacramento,

9 a.m.–1 p.m., Ziggurat Building, Auditorium, 707 Third Street.

- **Monday, April 16:** Los Angeles, 1–5 p.m., Junipero Serra State Office Building, Auditorium, 320 West 4th Street.

- **Wednesday, April 18:** Fresno, 1–5 p.m., Fresno City Hall, 2600 Fresno Street.

- **Tuesday, April 24:** San Bernardino, 1–5 p.m., Norman F. Feldheim Library, Auditorium, 555 West 6th Street.

- **Wednesday, April 25:** San Diego, 1–4:30 p.m., La Mesa Community Center, Arbor View South room, 4975 Memorial Drive, La Mesa.

- **Monday, April 30:** Oakland, 9 a.m.–1 p.m., Elihu M. Harris State Building, Auditorium, 1515 Clay Street.

For more information or to register for a public meeting, visit www.dir.ca.gov.

Staff Contact: Jeremy Merz

CalChamber, Coalition Opposing Elimination of Cal/OSHA Board

From Page 1

labor, management, and safety and health professionals.

All workplace safety regulations must pass the board; they must pass the approval of a majority of board members. This backstop ensures that proposals are fully vetted by interested parties, and that board staff has considered all sides of the issue, ultimately justifying any proposal that is brought before the board. A regulation supported by employers and employees results in the greatest compliance, leading to a higher standard of safety in the workplace.

Without a board, the coalition believes that the value of the process would be diminished; public participation would become irrelevant and disappear along with transparency in rulemaking.

Although the research and development of standards could be performed by other entities, the significant value of an independent board in the adoption of regulations cannot be ignored, the coalition stated in its letter.

The board brings value to the rulemaking process through its success in the following:

- Minimizes litigation from rulemaking perceived as inadequate or overreaching;
- Interactive process where everyone has a voice and all viewpoints are considered equally;
- Brings labor and management together to find common ground;
- Requires thorough vetting of technical issues;
- Allows the free-flowing evaluation of information;
- Brings important cost/benefit information of proposals to light; and
- When all parties buy in and contribute to the regulation, compliance is higher, which leads to a safer workplace for employees.

No Cost Savings

Pointing out that the Cal/OSHA Standards Board is funded primarily by an employer assessment with no

General Fund money, the coalition said its members support the continued cost to fund the board.

Board members are virtually unpaid, receiving only a small stipend of \$100 per meeting and travel expenses.

The Cal/OSHA Standards Board has been successful in balanced rulemaking and because its elimination would not produce General Fund savings, the significant value the board brings to the employers and employees of California should be retained.

Action Needed

The elimination of the Cal/OSHA Standards Board will be the subject of budget subcommittee hearings in the Assembly on March 7 and the Senate on March 8.

The CalChamber is urging businesses to contact their legislators and urge them to protect the Cal/OSHA Standards Board from elimination.

An easy-to-edit sample letter is available at www.calchambervotes.com.

Staff Contact: Marti Fisher

Climate Change Tax Gets Review in Budget Hearing

From Page 1

ARB even has legal authority to implement a revenue-raising auction.

He pointed out that AB 32, the climate change control law enacted in 2006, does not require a revenue-raising auction. The goals of AB 32 can be achieved without an auction, Burgat noted.

AB 32 calls for California to reduce its greenhouse gas emissions to 1990 levels by 2020. It also establishes mandatory reporting requirements and caps greenhouse gas emissions produced by industries categorized as significant sources.

Burgat also noted:

- AB 32 specifically requires the plan to “facilitate the achievement of the maximum feasible and cost-effective reductions.” An auction is not the most cost-effective way to achieve the reductions.

- The bill also indicates reduction

measures should “maximize benefits for California’s economy.” The cap-and-trade proposal does not do this.

- In fact, the state would be removing \$650 million to \$3 billion directly from the economy, not to mention the significant risk of leakage, due to the fact that California is moving forward alone on this experiment. The cost would total \$20 billion between now and 2020.

- The author of AB 32, then-Assembly Speaker Fabian Núñez (D-Los Angeles), specifically stated in a letter that fees are to be used only for the costs of administering the program.

- SB 31 from 2009–10 authored by AB 32 coauthor Fran Pavley (D-Agoura Hills) sought to allow fees collected above the administrative costs to be appropriated by the Legislature. This bill failed passage.

- Imposing an auction would exceed the reasonable cost of regulation, is

damaging to the California economy and insensitive to the pressures of increased energy prices, especially compared to competing states.

Burgat concluded by voicing concern about the comments of ARB representatives at the budget subcommittee hearing that they are designing the program from the perspective that every allocation given away freely is money that does not flow to the state. “This speaks to a goal of AB 32 other than one of reducing global greenhouse gases,” he said.

Upcoming Senate Hearing

The constitutional constraints on spending AB 32 allowance auction revenue will be the subject of a March 7 informational hearing of the Senate Select Committee on the Environment, the Economy, and Climate Change.

Staff Contact: Marc Burgat

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Pregnancy Disability Leave & Baby Bonding Webinar. CalChamber. May 17. (800) 331-8877.

Paid or Unpaid—Leaves of Absence Webinar. CalChamber. June 21. (800) 331-8877.

International Trade

Basics of Exporting - Webinars. U.S. Department of Commerce. March 7—Introduction to Foreign Regulations; March 13—Understanding Free Trade Agreements; April 4—How to Find HS Codes, Duties and Taxes; April 18—Understanding Export Controls; May 2—Duty Drawbacks; May 16—Taking Advantage of NAFTA; May 30—Completing Certificates of Origin; June 13—Financing Your Exports and Getting Paid; June 27—Temporary Exports-Carnets and Other Tools. (800) 872-8723.

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

CeBIT. California State Trade and Export Promotion (STEP). March 6–10,

Hannover, Germany.

International Environment Expo. California STEP. March 7–9, Shanghai, China. (310) 973-3161.

Trade Compliance and Marketing: Keys to Export Success. Monterey Bay International Trade Association and TradePort.org. March 8, Santa Cruz. (831) 335-4780.

Trade Connect-CalAgX Export Training. Port of Los Angeles. March 8–May 17, California. (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.

Ag Trade Mission to Asia. California

STEP and Fresno Center for International Trade Development. April 21–28, China and South Korea. (559) 324-6401.

Export Green Trade Mission. Brazil-U.S. Business Council. April 22–27, São Paulo, Brazil. (202) 463-5496.

Hannover Messe—Technology Meets Progress. Deutsche Messe. April 23–27, Hannover, Germany.

Aquatech India. California STEP and World Trade Center San Diego. April 25–29, Delhi, India. (619) 615-0868.

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

CalChamber Helps Launch Website to Boost Issues, Political Participation

To help encourage greater participation in the political process from businesses and their employees, the Business Industry Political Action Committee (BIPAC) and the California Chamber of Commerce have worked together to launch The California Prosperity Project at www.CAprosperity.org.

The Prosperity Project is a non-partisan effort seeking to provide greater education and awareness about candidates and their positions on the issues that are important to California businesses, their employees and their families.

Project Website

The website is designed to give California employees the information and tools they need to make it to the polls and cast an informed vote. The project website provides information on:



- Important public policy issues, and how visitors can take action;
- Finding the visitor's elected officials and seeing how they voted;
- Candidates running for office and upcoming ballot measures;
- Voter registration and early voting; and

- Election results and analysis.

BIPAC

BIPAC is a national, non-partisan organization providing resources to employers and business organizations across the country to help promote education and awareness of key issues and concepts that support economic growth and job retention and creation.

Greater Participation

For more information on how a company or organization can provide tools to employees and associates to engage them on issues and the elections process, and to use messages specific to an industry, company or organization, contact: Joe Savarise, senior vice president, field division for BIPAC, at savarise@bipac.org.

Staff Contact: Cathy Mesch

Genetic Info Nondiscrimination Recordkeeping Rule Takes Effect April 3

The Equal Employment Opportunity Commission (EEOC) has issued its final recordkeeping rule for the federal Genetic Information Nondiscrimination Act (GINA). This rule will take effect on April 3.

The new recordkeeping rule (first proposed last June) requires employers to take the following steps:

- Any personnel or employment record made or kept by an employer must be preserved by the employer for a period of one year from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of one year from the date of termination.

- Where a charge of discrimination has been filed, or an action brought by the EEOC or the U.S. Attorney General, against an employer under GINA, the employer must preserve all personnel records

relevant to the charge or action until final disposition of the charge or the action.

These exact requirements already exist under Title VII and the Americans with Disabilities Act (ADA). The final regulations "do not require employers to create any records and do not impose any reporting requirements, but merely require employers to maintain the records that they do create."

GINA prohibits employers from discriminating against employees or applicants because of genetic information. California law also prohibits discrimination on the basis of an employee's genetic information or genetic characteristics.

CalChamber Webinar

To help employers keep current on compliance requirements and determine which records must be kept confidential, the California Chamber of Commerce will be offering a recordkeeping webinar on Thursday, March 15, 10 a.m.–11:30 a.m.

Recordkeeping Webinar

The CalChamber Recordkeeping 101 Webinar on March 15 will cover:

- I-9 documentation and retention;
- W-4s and DE4s;
- Confidentiality of records; and
- Record retention requirements.

Registration

For more information or to register, call (800) 331-8877 or visit calchamber.com/recordkeeping.

The webinar will be presented by:

- **Susan Kemp**, CalChamber senior employment law counsel.
- **Erika Frank**, vice president, legal affairs, and general counsel for the CalChamber.

Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

Bill Protects Special Events from Environmental Lawsuits



SUPPORT

A California Chamber of Commerce-**supported** bill that will exempt limited duration events with a park use or special events permit from the California Environmental Quality Act (CEQA) process is awaiting a hearing in the Senate Environmental Quality Committee.

Special limited duration events are an integral part of California's tourism, economy and charitable organizations. **SB 973 (Vargas; D-San Diego)** will provide certainty for limited duration events to continue in California without the fear of legal challenges under CEQA.

CEQA was passed to ensure that California's environment is evaluated and considered before moving forward with a

project. SB 973 seeks to uphold the ability for limited duration events to continue without having the extensive review process intended for building and development. Forcing limited duration events such as parades, fireworks displays, marathons and street fairs to undergo the CEQA process can be costly, time consuming and is beyond the scope of the intended purpose of CEQA.

Action Needed

SB 973 will be considered by Senate Environmental Quality. Please contact your senator to urge **support** for **SB 973**.

Staff Contact: Amy Mmagu

CalChamber Seeking Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominations for its Small Business Advocate of the Year Award.

Each year, the CalChamber recognizes several small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

Application

The application should include information regarding how the nominee has significantly contributed as an outstanding advocate for small business in any of the following ways:

- Held leadership role or worked on statewide ballot measures;
- Testified before state Legislature;
- Held leadership role or worked on local ballot measures;
- Represented chamber before local government;
- Actively involved in federal legislation.

The application also should identify specific issues the nominee has worked on or advocated during the year.

Additional required materials:

- Describe in approximately 300 words why nominee should be selected.
- News articles or other

exhibitions as supporting materials.

- Letter of recommendation from local chamber of commerce president or chairman of the board.

Deadline

Award nominations are due to the CalChamber Local Chamber Department by April 15. The nomination form is available on the CalChamber website at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.

CalChamber Urges Congress to Approve Reauthorization for Export-Import Bank



The California Chamber of Commerce is urging Congress to reauthorize the Export-Import Bank of the United States (Ex-Im) to prevent the loss of U.S. jobs to foreign

competitors.

In the five years since Congress last reauthorized the bank's operations, Ex-Im has refunded more than \$3.4 billion to the U.S. Treasury above all costs and loss reserves, including \$700 million for the 2011 fiscal year alone.

California Impact

Since the last reauthorization, the bank has helped nearly 1,000 businesses from California, the vast majority being small businesses.

The Ex-Im Bank's temporary authorization is due to expire on May 31. Failure to reauthorize the bank's operations would seriously disadvantage

U.S. companies, both small and large, in foreign markets, potentially resulting in the loss of thousands of U.S. jobs.

The four-year reauthorization for the Ex-Im Bank also should increase its lending cap sufficiently, the CalChamber said in its letter to congressional representatives.

As the official credit agency of the United States, Ex-Im Bank's mission is to assist in financing the export of U.S. goods and services to international markets.

Small Business Help

Ex-Im Bank reports that small businesses account for 87% of its transactions. The small business transaction figures are in addition to the tens of thousands of small and medium-sized businesses that supply goods and services to large exporters.

In the 2011 fiscal year, the Ex-Im Bank provided more than \$6 billion in financing and insurance for U.S. small businesses, an increase of nearly 90% since the 2008 fiscal year.

The bank has set a goal of providing \$9 billion each year in small-business export financing and adding 5,000 new

small businesses to its portfolio by 2015.

Since its creation in 1934, Ex-Im Bank has supported more than \$456 billion of U.S. exports, primarily to developing markets worldwide.

CalChamber Position

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

Action Needed

The vote on reauthorizing the Ex-Im Bank is expected within the next few weeks. The CalChamber is urging members to contact their congressional representatives to ask them to approve reauthorizing the Ex-Im Bank.

A sample letter is available at www.calchambervotes.com.

Staff Contact: Susanne Stirling

California to Open New Trade and Investment Offices in China

To give California businesses an advantage in China, Governor Edmund G. Brown Jr. recently announced plans to open new trade and investment offices in China.

According to the Governor's Office, the California-China Trade and Investment Office will provide California companies with increased access to Chinese business contacts and provide Chinese investors with access to California projects that will benefit from increased investment.

Financing for the office will be provided by partners in the private sector through the Governor's Office of Business and Economic Development (GO-Biz). In addition to developing these financial partnerships, GO-Biz will work with the Chinese government to facilitate the opening of the office.

China is the world's largest exporter of goods and third largest importer, ranking



closely behind the United States and the European Union. The vast majority of China's exports to the United States go through California ports.

In 2011, China continued as California's third largest trading partner, with more than \$14.2 billion in exports. In addition, China invested \$1.5 billion in California projects in 2011, or 10% of all Chinese investment in the United States.

The announcement of the new trade offices coincided with a visit to Los Angeles by Chinese Vice President Xi Jinping. During Vice President Xi's visit, he discussed trade and investment opportuni-

ties with Governor Brown and U.S. Vice President Joe Biden. The Los Angeles visit was Vice President Xi's last stop in a four-day tour of the United States.

California has not had a formal presence in China since the previous foreign trade offices were closed in 2003. The new trade and investment offices are slated to open in Shanghai and Beijing.

Several recent economic plans drafted by governmental and private entities, including a report by Lieutenant Governor Gavin Newsom, have recommended that California expand its overseas presence to facilitate investment and trade growth during the current economic recovery.

For more information on California-China trade, visit the China Trading Partner Portal at www.calchamber.com/international.

Staff Contact: Susanne Stirling



MANDATORY HARASSMENT PREVENTION TRAINING

Protect your business and employees.

California companies with 50 or more employees are required to provide two hours of sexual harassment prevention training to all supervisors **within six months of hire or promotion**, and every two years thereafter. CalChamber's online supervisor course meets AB 1825 training requirements and helps your company avoid work situations that put you at risk for costly lawsuits. Remember, it only takes one—one inappropriate comment, one uncomfortable person, one complaint—for an employee to file a harassment lawsuit.



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Convenient online harassment prevention training from CalChamber features realistic video vignettes based on actual court cases.

Learners can start and stop any time. The system automatically tracks their progress.

ORDER online at calchamber.com/harassment or call (800) 331-8877.

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