

ALERT

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Costly Workplace Mandates Awaiting Action in Senate



Three California Chamber of Commerce-opposed “job killer” bills that create costly workplace mandates by

expanding discrimination litigation and protected leave requirements have moved from the Assembly to the Senate.

Expands Litigation

● **AB 1450 (Allen; D-Santa Rosa)** subjects employers to charges of discrimination for legitimately inquiring

into an applicant’s employment history.

The bill prohibits employers from considering an applicant’s current “employment status” when hiring for an available position, unless such status satisfies a “bona fide occupational” requirement.

To avoid exposing an applicant’s current status as “unemployed” during the application process, however, employers will in essence be barred from asking questions regarding a recent employer, dates, and reasons for separation or risk fines or litigation.

The CalChamber believes an employer should be allowed to investigate the reasons a person is unemployed, including

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Job Creator Bill Promoting Transparency Passes Senate Committee



A California Chamber of Commerce-supported job creator bill that encourages

job growth by promoting government accountability and a transparent process when proposing new residential building standards passed the Senate Transportation and Housing Committee this week.

● **AB 1612 (Lara; D-Los Angeles)** promotes government accountability and a transparent process by requiring proposed new residential building standards to include the cost of compliance, potential benefits of the proposed standard and the underlying model used to achieve those estimates.

This bill is a part of the CalChamber’s 2012 Renew Agenda and will help position California for economic recovery.

Currently, when an agency provides its economic analysis of a proposed building standard, it may choose to not include the cost of compliance if it deems there would be “no significant impact on housing.”

However, such ambiguous, subjective language creates uncertainties and does not allow the industry to fully prepare for the proposed standard.

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Senate Committee OKs Workers’ Comp Bills Increasing Frictional Costs, Attorney Fees



Two California Chamber of Commerce-opposed bills that unnecessarily increase workers’ compensation costs, incentivize litigation and

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drive up attorneys’ fees passed the Senate Labor and Industrial Relations Committee on June 13.

● **AB 1145 (Cedillo; D-Los Angeles)** increases frictional costs in the workers’ compensation system by creating a two-tiered system for the supplemental job displacement voucher.

● **AB 1687 (Fong; D-Mountain View)** unnecessarily increases costs and

incentivizes litigation by permitting the Workers’ Compensation Appeals Board (WCAB) to award attorneys’ fees to an applicant who challenges a utilization review decision regarding a future medical treatment award.

AB 1145: Creates Inequities

AB 1145 seeks to accelerate injured workers’ access to a uniform Supplemental Job Displacement Voucher (SJDV).

The CalChamber supports the underlying concept of accelerating injured workers’ access to the uniform SJDV benefit. As amended on January 4, 2012, however, AB 1145 creates inequities while unnecessarily adding

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Labor Law Corner

State Law Gives Registered Domestic Partners Employment Law Rights



Ellen Savage
HR Adviser

I know California includes employees' domestic partners in many of its employer group health insurance and leave laws, but who exactly qualifies as a domestic partner and what proof may I require?

California law defines a domestic partnership as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, and who have formally

registered as domestic partners with California's Secretary of State.

The California laws that cover domestic partners for purposes of employer group health insurance or leave rights specifically include only those individuals who have formally registered as domestic partners.

Couples who live together but who have not registered with the Secretary of State are not entitled to employer health insurance coverage for a domestic partner, nor to leave rights such as family leave and kin care.

Registration

In order to register as a domestic partner, California law generally requires that both partners are members of the same sex. Opposite sex partnerships also are permitted, however, when at least one of the partners is over the age of 62 and eligible for certain types of Social Security benefits.

The law also requires that both partners be over the age of 18 (unless there is a court order granting permission to a minor), and that neither partner be married nor related to the other partner by blood in a way that would prevent marriage.

Partners can register by completing a Declaration of Domestic Partnership

Form, having both partners' signatures notarized, and submitting the form with the required fee to the California Secretary of State.

After the declaration is filed, the couple will receive a Certificate of Registration of Domestic Partnership. Note that domestic partner registration that may be offered by some California cities/counties does not provide the same statewide legal rights to employees as does registration with the California Secretary of State.

Common-Law Marriage

Sometimes employees who are living with an opposite sex partner will claim they should be entitled to leave or insurance benefits because they consider themselves to be common-law spouses, which is a form of marriage recognized in some states once a couple has been living together in a committed relationship for a certain number of years.

In most cases, California does not recognize common-law marriage, however, and does not consider it to convey the same legal rights as a formally registered domestic partnership.

Therefore, couples claiming to be married by common law are not entitled

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CalChamber-Sponsored Seminars/Trade Shows

More information at
www.calchamber.com/events.

Labor Law

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

Hiring and Onboarding Basics Webinar.
CalChamber. July 19. (800) 331-8877.

Conducting Effective Performance Appraisals Webinar. CalChamber.
August 16. (800) 331-8877.

Employee Discipline Webinar.
CalChamber. September
20. (800) 331-8877.

FMLA/CFRA Webinar. CalChamber.
October 18. (800) 331-8877

International Trade

Breaking Down Barriers to Exporting.
United Parcel Service. June 21, Sunol.
(510) 686-2634.

9th Annual Global California Conference.
Monterey Bay International Trade
Association (MBITA). June 22,
San Jose. (831) 335-4780.

**California Meets Panama – Trade
Conference.** MBITA. June 22,
San Jose. (831) 335-4780.

Webinar: Temporary Exports. U.S.
Department of Commerce. June 27.
(202) 482-4422.

**California Pavilion at Chile-Expo
Hospital 2012.** Los Angeles
Area Chamber of Commerce and
CalChamber. June 27–29, Santiago,
Chile. (213) 580-7570.

Food Taipei 2012. Taiwan Trade Center,
San Francisco. June 27–30, Taiwan.
(408) 988-5018.

2012 India Trade Conference. Port of Los
See CalChamber-Sponsored: Page 4



CalChamber Recognizes Small Business Advocates in Oxnard, San Jose

The California Chamber of Commerce has named business owners from Oxnard and San Jose as recipients of the 2012 Small Business Advocate of the Year Award, recognizing them for their advocacy efforts on behalf of small businesses.

The 2012 Small Business Advocate of the Year Award recipients are:

- Suzanne Scar, owner, Central Coast Imaging Solutions, Oxnard; and
- Janis Schneider, owner, R&J Jewelry and Loan, San Jose.

Suzanne Scar

Scar's advocacy on behalf of small businesses in 2011 included opposing increases in minimum wage, paid sick days and paid bereavement leave. She also was involved in the redistricting of Ventura County's supervisorial seats and relayed the opposition local farmers had against card check legislation.

In recommending Scar for the Small Business Advocate award, Steven Buenger, chairman of the board of the Oxnard Chamber of Commerce, said he was "impressed" by Scar's advocacy



Suzanne Scar



Janis Schneider

efforts—both in the local community and at the State Capitol.

Scar served as chairman of the board of the Oxnard Chamber and chairman of the board of the Chambers of Commerce Alliance of Ventura & Santa Barbara Counties.

Janis Schneider

Last year, Schneider worked on pension reform, fiscal accountability and legislation affecting pawn shop record keeping. She served on the San Jose Silicon Valley Chamber Political Action Committee's Candidate Cultivation

Committee, interviewing candidates and supporting her peers through an extensive candidate vetting process. Schneider also worked to financially support business candidates endorsed by the chamber for local and state office.

In nominating Schneider for the award, Matthew Mahood, president and CEO of the San Jose Silicon Valley Chamber of Commerce, said, "Janis Schneider epitomizes the verb 'engage.'... It is always a pleasure to work with Jan. She is a committed woman who doesn't just 'talk the talk,' but follows up by 'walking the walk.'"

Criteria

Honorees are nominated by local chamber of commerce executives.

The criteria used in the selection process include taking leadership roles in or working on federal, state or local ballot measures, testifying before the state Legislature and representing a local chamber of commerce before local government.

Staff Contact: Dave Kilby

Job Creator Bill Promoting Transparency Passes Senate Committee

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AB 1612 requires an agency proposing a residential building standard to cite the cost of compliance, potential benefits of the proposed standard, and the underlying assumptions used in achieving those estimates. Hence, AB 1612 would present a clear understanding of economic impacts of new regulations.

This bill would provide some relief to the ailing residential construction industry by increasing transparency and certainty.

Key Vote

AB 1612 passed Senate Transportation and Housing on June 12, 8-0.

Ayes: DeSaulnier (D-Concord), Gaines (R-Roseville), Harman

(R-Huntington Beach), Kehoe (D-San Diego), A. Lowenthal (D-Long Beach), Pavley (D-Agoura Hills), Rubio (D-East Bakersfield), Wyland (R-Escondido).

Absent/abstaining/not voting: Simitian (D-Palo Alto).

Staff Contact: Marc Burgat

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to domestic partner participation in employer group health plans or to employee leave rights that are afforded to registered domestic partners.

Equal Treatment

Whether an employer may request proof of domestic partnership before extending insurance or leave rights depends on the employer's policy with regard to requesting proof for married

employees. Employees seeking to cover their domestic partner under an employer's group health insurance plan, or who request leave to care for a domestic partner, must be treated the same as married employees seeking such coverage or leave.

Only if a company policy requires proof of marriage (such as a marriage certificate) for such benefits for married couples may an employer require proof of domestic partnership when a domestic

partner requests those same benefits. Requiring more documentation from domestic partners could be a violation of California anti-discrimination laws.

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.

Costly Workplace Mandates Awaiting Action in Senate

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whether the applicant was recently terminated for serious misconduct, before offering that person a job and bringing him/her into the workplace.

● **AB 1999 (Brownley; D-Santa Monica)** makes it virtually impossible for employers to manage their employees and exposes them to a higher risk of litigation by expanding the Fair Employment and Housing Act (FEHA) to include a protected classification for any person who is, perceived, or associated with a family caregiver.

The bill proposes to include “family caregiver status” as a protected classification under FEHA to prevent discrimination on such basis, but provides such a broad application of a protected classification that it will essentially encompass almost all employees in the workforce. This hampers an employer’s ability to manage the business, as any adverse employment action the employer takes against an employee could potentially be challenged as discriminatory on the basis of “family caregiver status.”

Approximately 19,500 discrimination claims were filed in 2010 with the Department of Fair Employment and Housing under FEHA, which was 1,000 complaints more than in 2009. Adding this new expansive classification to FEHA will only cause such cases to increase dramatically, placing California employers at a significant disadvantage.

Expands Leave Categories

AB 2039 (Swanson; D-Alameda) creates a burdensome, California-only mandated benefit that significantly expands the category of individuals with serious health conditions for whom an employee can take a leave of absence beyond what is currently included under the federal Family Medical Leave Act.

The bill seeks to expand the California Family Rights Act (CFRA) by allowing an employee a protected leave to care for adult children, parents-in-law, grandparents and siblings.

CFRA is already costly to employers, and expanding the types of individuals or circumstances under which an employee

can take a leave of absence under CFRA, through AB 2039, would only further increase the cost of doing business for employers in California.

Moreover, AB 2039 would also create additional pressure on the state economy, as the bill is identical to AB 59 (Swanson; D-Alameda), which was introduced last year and held in the Assembly Appropriations Committee due to the increased pressure the bill would place on the General Fund.

Action Needed

Once assigned to a policy committee, AB 1450, AB 1999 and AB 2039 are expected to be considered by the Senate Labor and Industrial Relations Committee.

The CalChamber is urging members to contact their senators and committee members to urge a “**no**” vote on all three bills.

Easy-to-edit letters are available at www.calchambervotes.com.

For updates on the remaining “job killer” bills, visit www.CAJobKillers.com.
Staff Contact: Jennifer Barrera

CalChamber-Sponsored Seminars/Trade Shows

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Angeles, U.S. Commercial Service, Quanta Consulting. June 28, Cerritos. (949) 480-9466.

California Pavilion at Farnborough 2012. U.S. Department of Commerce. July 9–15, Farnborough, England. (949) 660-7105.

Intersolar-North America. Northern California Regional Center for International Trade Development (CITD). July 10–12, San Francisco. (916) 563-3222.

Webinar: Satisfying International Product Certification. U.S. Department of Commerce. July 11. (202) 482-4422.

Webinar: Website Optimization. U.S. Department of Commerce. July 25.

(202) 482-3787.

Webinar: New INCO Terms. U.S. Department of Commerce. August 8. (202) 482-4422.

Export Regulations Seminar. Bureau of Industry and Security, Southern California Regional District Export Council, and U.S. Commercial Service in Southern California. August 8–9, Los Angeles.

Hong Kong Food Expo. Hong Kong Trade Development Council. August 16–20, Hong Kong, China. (310) 973-3175.

CA Cleantech Company Trade Mission to China. El Camino College CITD. August 20–September 2, China. (310) 973-3161.

Access China. World Trade Center San Diego. September 5–13, Xiamen, Nanjing, Changzhou, and Shanghai, China. (619) 615-0868 ext. 118.

Green Construction Trade Mission to Brazil. Bay Area CITD. September 9–15, São Paulo and Rio de Janeiro, Brazil.

Expoalimenteria 2012. Exporters Association, Ministry of Agriculture, Ministry of External Relations, and Prom Peru. September 19–21, Lima, Peru.

Trade Mission to the UK. U.S. Commercial Service. October 15–17, London.



CAJobKillers.com

Updates, news links, videos, contributions link

CalChamber Backs Permanent Normalizing of U.S. Trade Relationship with Russia



The California Chamber of Commerce is encouraging Congress to approve legislation to extend Permanent Normal Trade Relations (PNTR) with Russia this summer.

The U.S. House Ways and Means Committee and the U.S. Senate Finance Committee are expected to hold hearings later in June in the process that ultimately will require a vote in both houses of Congress.

In a welcome development for American workers, farmers and companies, Russia will join the World Trade Organization (WTO) this summer. Russia is by far the largest economy in the world that has yet to join the WTO, and doing so will require Moscow to further open its market, safeguard intellectual property and investments, and strengthen the rule of law. The result will be more U.S. exports and more American jobs, as U.S. companies see huge potential in Russia.

Lifting 1974 Law

The United States will not get the full benefits of these market-opening reforms, however, unless Congress approves a short and simple bill establishing PNTR for Russia and moving it beyond the outdated requirements of a 1974 law known as the Jackson-Vanik amendment.

The Jackson-Vanik amendment to the Trade Act of 1974 was enacted with the chief purpose of ending the policy that prevented emigration of Jews from the then-Soviet Union. With respect to Russia, the Jackson-Vanik amendment has successfully accomplished its objective. Russia terminated its exit fees on Jewish emigrants in 1991, and today Russian Jews freely emigrate to Israel and elsewhere.

Since 1992, U.S. presidents of both parties have certified annually that Russia complies with the Jackson-Vanik amendment's provisions, and

this has allowed the United States to maintain Normal Trade Relations (NTR) status with Russia. Now is the time for Congress to end this certification process and make this normal trading status permanent.

Because no other WTO member has a law similar to Jackson-Vanik, all of Russia's trading partners except the United States will immediately benefit when Russia joins the WTO, which is expected to happen by mid-summer. If Congress fails to enact PNTR with Russia before then, U.S. industry will be on the sidelines of Russia's market, at a disadvantage for lucrative contracts, and without the full tools provided by a WTO relationship.



Failure to approve PNTR, thereby removing Russia from Jackson-Vanik requirements, would put the United States at a unique disadvantage in the Russian market. Meanwhile, European and Asian companies will be able to build on their already-significant head start in tapping the growing Russian market.

U.S. Export Opportunities

This legislation is crucial in order for U.S. manufacturers, service providers, agricultural producers and their employees to take advantage of the many market opening and transparency commitments that form Russia's accession package to the WTO.

PNTR also gives the United States a powerful tool by enabling the United States to ensure that Russia abides by those commitments through internationally binding WTO dispute settlement.

Russia is the world's 11th largest economy and is already Europe's largest consumer market. Russia also has exhibited a growing demand for high quality goods and services. Yet many Russian WTO commitments that will

greatly improve its business climate—such as its adherence to the rules of the international trading system regarding intellectual property rights, science- and risk-based regulation for animal and plant health, and liberalizations in key sectors such as services—will be out of the United States' reach, unless Congress passes Russia PNTR legislation.

Of the top 15 U.S. trading partners, Russia was the market where U.S. companies enjoyed the fastest export growth last year (38%). Approval of this legislation will translate directly into new export sales and jobs in the United States.

The President's Export Council estimates that U.S. exports to Russia—which, according to estimates, topped \$11 billion in 2011—could double or triple once Russia joins the WTO. Meanwhile, the United States gives up nothing—not a single tariff—in approving PNTR with Russia.

Russia is an important part of U.S. business' global strategy to create and sustain jobs at home by enhancing long-term competitiveness abroad. Many U.S. companies have developed vibrant, profitable and rapidly growing business and trade with Russia, with clear strategic benefits to parent companies, exports from, and employment in, the United States. Without PNTR, U.S. companies and their employees will be left behind competitors in this growing and profitable market.

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. New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

Further, while the CalChamber

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French Ambassador Highlights Innovation, Entrepreneurship

Economic relations between France and California were the subject of the day when the Ambassador of France called on the California Chamber of Commerce in Sacramento this week.

During his trip to Northern California, Ambassador François Delattre focused on innovation and entrepreneurship, visiting a business incubator and meeting with researchers and U.S. firms in Berkeley and the Bay Area.

Regarding the European Union, the Ambassador cited economic restraint, promoting growth, and improved governance as key priorities for the near future.

The United States exported \$27.8 billion to France in 2011, while importing \$40 billion. California exports to France totaled \$2.3 billion in 2011, while imports amounted to \$2.5 billion. Transportation equipment is a major import and export product. France is a major investor in California, with French companies supporting 60,000 jobs.



(From left) François Delattre, ambassador of France to the United States; Allan Zarembert, CalChamber president and CEO; Romain Serman, consul general of France in San Francisco; Susanne Stirling, CalChamber vice president, international affairs meet on June 11 in Sacramento.

CalChamber Backs Permanent Normalizing of Trade with Russia

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deploring human rights abuses in Russia and elsewhere around the world, the CalChamber supports extension of PNTR status and accession to the WTO for Russia as an important step toward greater respect for human rights and political freedom for the Russian people. U.S. trade and investment provide crucial support for the entrepreneurial forces in Russian society that advocate further economic and political reform.

U.S. trade with Russia helps to promote values Americans cherish. Approval of PNTR will support Russian entrepreneurs and workers whose prosperity and jobs depend on trade and access to the outside world. The United States should support, not isolate, the segments of Russian society that offer the best hope for further progress toward greater freedom and the rule of law for all of Russia.

Membership in the WTO can be the cornerstone of stable U.S.-Russia commercial relations. Further, the WTO is the foundation for continued dialogue and cooperation among the world's trading partners, and can serve

as leverage regarding certain economic issues, thereby giving a chance to supporters of change.

For further information, see www.calchamber.com/RussiaPNTR.

Staff Contact: Susanne Stirling



"Recognizing that world trade is critical to our state's economic health, CalChamber is a longtime leader on international issues, including the free trade agreements just passed by Congress."

SUSAN CORRALES-DIAZ
PRESIDENT
SYSTEMS INTEGRATED, ORANGE

CalChamber Member **Feedback**

Workers' Comp Bills Increase Frictional Costs, Attorney Fees



OPPOSE

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layers of administrative complexities and expenses to California's workers' compensation law.

In addition, this legislation represents the piecemeal workers' compensation reform disfavored and vetoed by Governor Edmund G. Brown Jr. in 2011.

The bill creates a two-tiered benefit system that is based on the date of injury and eligibility for the SJDV benefit. This system creates inequities as it deprives workers injured before January 1, 2013, who are not yet eligible for the SJDV benefit under current law, of access to the accelerated and improved SJDV benefit. These workers would be forced to wait for their retraining voucher and would have to delay their return to the workforce, while similarly situated workers injured after this date would be able to take advantage of the improved benefit.

As California has one of the lowest return-to-work rates in the country, it is essential for AB 1145 to help all injured workers re-enter the workforce, not just those injured after January 1, 2013.

Not only is this system inequitable to injured workers; it leaves businesses with additional administrative hurdles. AB 1145 forces businesses to navigate a two-tiered system containing separate job-offer dates, separate notification dates, and differing voucher benefit amounts based on an arbitrary date of injury and whether an injured worker is already SJDV eligible.

One misstep in this administrative maze could trigger additional litigation, escalate costs and prolong the period before injured workers receive their SJDV benefit. Businesses would be forced to expend more time and resources to ensure compliance with this complicated legislation.

The CalChamber and other employer groups provided simple amendments to AB 211—a carbon copy of AB 1145—that would create one efficient and cost-effective system. However, these amendments that would accelerate injured workers' access to the uniform

SJDV benefit without creating administrative complexities, escalating costs and increasing the prospect of litigation, have not been incorporated into AB 1145.

California needs to seek balanced cost-saving measures in the workers' compensation system, not implement new laws that increase administrative complexity and add more costs. Stakeholders are now beginning to examine ways to balance an increase in benefits with a reduction in frictional costs.

Issues with the SJDV benefit should be addressed through a global workers' compensation reform process, not through piecemeal legislation that increases administrative inefficiencies and costs.

AB 1687: Incentivizes Litigation

AB 1687 seeks to award attorneys' fees to injured workers receiving medical treatment under a future medical award who succeed in overturning a utilization review decision at the WCAB.

This bill would unnecessarily incentivize more litigation in an area of workers' compensation that is already heavily regulated and contains appropriate penalties.

The Labor Code requires all California employers to establish and maintain a utilization review program. These programs ensure all injured workers receive appropriate, evidence-based care and are extensively governed by the Division of Workers' Compensation (DWC).

Indeed, each and every utilization review program must meet restrictive guidelines laid out by both the Labor Code and the DWC, and must be approved with the DWC's administrative director. Employers face a myriad of penalties if their utilization review program does not comply with these guidelines.

The Labor Code also provides for penalties and attorneys' fees where an employer unreasonably delays or refuses

medical care. Given the existing rigid framework and stiff penalties relating to utilization review, the attorneys' fees penalties in AB 1687 are unnecessary and increase system costs.

AB 1687 also purports to grant injured workers adequate representation by imposing attorneys' fees in cases where workers prevail in a utilization review decision over a future medical award. However, the DWC already provides representation in the form of the Information and Assistance Unit.

This unit is staffed by insurance and assistance officers whose sole job is to help injured workers navigate the system—including issues involving access to future medical treatment. These officers are available at all 24 WCAB venues throughout the state and can assist injured workers without driving up litigation costs.

As stakeholders throughout the state are examining ways to balance an increase in benefits with a reduction in frictional costs, a common refrain is that the system is overburdened with litigation. California needs to seek balanced cost-saving measures in the workers' compensation system, not implement new laws that unnecessarily incentivize litigation and add more costs.

Key Votes

● **AB 1145** passed Senate Labor and Industrial Relations, 5-1:

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

Noes: Wyland (R-Escondido).

Absent/abstaining/not voting: Runner (R-Antelope Valley).

● **AB 1687** passed Senate Labor and Industrial Relations, 6-0:

Ayes: DeSaulnier (D-Concord), Leno (D-San Francisco), Lieu (D-Torrance), Padilla (D-Pacoima), Wyland (R-Escondido), Yee (D-San Francisco).

Absent/abstaining/not voting: Runner (R-Antelope Valley).

Staff Contact: Jeremy Merz

They won't know unless you tell them.
Write your legislator.
calchambervotes.com



Updated for New Meal and Rest Break Rules

CalChamber's *2012 California Labor Law Digest* provides guidance and best practices on complying with the California Supreme Court's recent *Brinker* decision. The Court's ruling requires employers to examine meal and rest break policies and strengthen timekeeping practices.



Book, CD or Download:
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