

# ALERT

VOLUME 38, NUMBER 33 • NOVEMBER 30, 2012



## State Faces Double Blow from Federal Budget Cuts

*336,000 Defense Jobs, \$21 Billion Economic Output*

California will be hit hard by sequestration, the automatic spending cuts in the federal budget set to go into effect January 1, 2013 unless Congress agrees on a plan by year end to reduce the federal deficit by more than \$1 trillion.

If sequestration goes forward, combined with the earlier mandated cuts to the U.S. Department of Defense, the state will lose 336,000 defense-related jobs, \$21 billion in economic output and \$6.9 billion in personal earnings over the next eight years, according to a new study

released on November 29.

The study was conducted for the Southwest Defense Alliance by the economic consulting firm Andrew Chang & Company, with funding provided by the Southern California Leadership Council.

### Lower Personal Earnings

Sequestration will account for 136,000 of these lost jobs, \$7.5 billion in reduced economic output and \$2.4 billion in lower personal earnings, the study revealed.

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## U.S. Agency Releases Proposed Rules on Implementing Health Care Act



The U.S. Department of Health and Human Services (HHS) has released proposed rules outlining how three aspects of the Affordable Care Act will work: the essential benefits that must

be offered; prohibitions on discriminating against individuals with pre-existing conditions; and an expansion of employer-offered wellness programs.

### Essential Health Benefits

The proposed rule calls for health plans in the individual and small-group markets (both inside and outside of the new exchanges) to provide coverage in 10 categories of services, as required by the health care law.

Essential health benefits have to equal those offered in a typical employer plan in a state, which serves as a benchmark plan.

As outlined in the federal law, the essential benefits include these categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs;

*See U.S. Agency Releases: Page 3*

## Employment Laws Will Affect Your Business



The California Chamber of Commerce has released a list of new employment laws scheduled to take effect in 2013 or earlier that will have an impact on businesses in California.

There have been significant changes in key areas, such as anti-discrimination protections, employee access to personnel records and employer access to personal social media accounts. Other laws relate to specific industries, such as farm labor contractors and temporary services employers.

Unless specified, the following list of new legislation goes into effect on January 1, 2013. The entire list also can be viewed at [www.calchamber.com/newlaws2013](http://www.calchamber.com/newlaws2013).

- Religion and Reasonable Accommodation
- Sex Discrimination and Breastfeeding
- Social Media and Personal Passwords
- Inspection of Personnel Records
- Itemized Wage Statements/ Temporary Service Employers
- Penalties for Wage Statement Violations
- Commission Agreements
- Fixed Salaries and Overtime
- Wage Garnishment
- Human Trafficking Posting
- Workers' Compensation Reform
- Accessibility Reform
- Fair Employment/Housing Commission Eliminated
- Intellectual Disabilities
- Unemployment Insurance: Overpayment and Penalties
- Prevailing Wage
- Farm Labor Contractors
- Warehouse Workers

### Inside

Pictorial Roster of Officers/Legislature

## Cal/OSHA Corner

# Work-Related Injury/Illness Summary: Form 300A Posting Exemptions



**Mel Davis**  
Cal/OSHA Adviser

*My company will be closing several field offices before January 2013. Will we be required to post the Form 300A for those locations that no longer exist?*

Multi-establishment employers that have closed operations at some establishments during the calendar year do not need to post the Form 300A - Summary of Work-Related Injuries and Illnesses for the closed establishments.

The employer will need to make a copy of the summary available, however, to each employee who receives pay during the February 1 through April 30 posting period who does not report to any fixed establishment on a regular basis.

### Posting Exemptions

If your company had 10 or fewer employees at all times during the last calendar year, your company does not need to keep Cal/OSHA injury and illness records.

This exemption also applies if your company's Standard Industrial Classification Code is included in Table 1 of Article 2 of the regulations adopted by California's Division of Labor Statistics and Research.

The federal Occupational Safety and Health Administration (OSHA) or the U.S. Bureau of Labor Statistics may, however, request in writing that you participate in a random survey to provide records as detailed in the provisions of Section 14300.41 or Section 14300.42 of the California regulations.

A free Log 300 wizard in the Forms & Tools section at [www.hrcaifornia.com](http://www.hrcaifornia.com) can help a business determine whether it is subject to record-keeping requirements.

### Posting Period

When a business is required to maintain a Form 300, a Form 300A must

be completed and posted beginning February 1. This form contains a summary of the total number of job-related injuries and illnesses that occurred during the previous year.

Employers are required to post only the Form 300A—not the Form 300 (Log)—from February 1 to April 30.

All employers covered by California's safety and health regulations, even those exempt from the record-keeping requirement, need to comply with safety and health standards, and must report verbally within eight hours to the nearest OSHA office all fatal accidents or the hospitalization of three or more employees.

Also, employers exempt from the record-keeping requirements must continue to file reports of occupational injuries and illnesses with the California Division of Labor Statistics and Research.

Copies of the Cal/OSHA Forms 300, 300A and 301, and more information on filing and posting requirements are available at [www.hrcaifornia.com](http://www.hrcaifornia.com).

*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.hrcaifornia.com](http://www.hrcaifornia.com).*

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### Labor Law

HR 101: Intro to HR Administration.

CalChamber. December 12:  
Emeryville; January 7, 2013: Costa  
Mesa; January 10: Anaheim; January  
23: San Jose. (800) 331-8877.

HR 201: California Labor Law Update  
Seminar. CalChamber. January 8,  
2013: Costa Mesa; January 9: Long  
Beach; January 11: Anaheim; January  
17: Sacramento; January 24: San Jose;  
January 25: Emeryville. (800) 331-8877.

Exempt Employees Seminar.  
CalChamber. January 8, 2013: Costa  
Mesa; January 9: Long Beach; January  
17: Sacramento; January 24: San Jose.  
(800) 331-8877.

### Business Resources

Networking/Recruiting Fair for  
Employers. University of California  
(UC), Merced. March 13, 2013:  
University of the Pacific, Stockton;  
March 14: UC Merced, Merced;  
March 15: Fresno State University,  
Fresno. (209) 228-7272.

### International Trade

World Affairs Council Event on China.  
World Affairs Council. December 5,  
Sacramento. (415) 293-4600.  
Chinese Innovators II: From Local  
to Global Brands. btrax, Inc. and  
InnoSpring. December 6, Santa Clara.  
(415) 344-0907.  
ZOOM World Tour. National Danish  
Performance Team. January 12, 2013,  
Sacramento. (916) 808-5181.



# Carbon Auction Levies Unauthorized Tax



*The following opinion piece appeared in the San Francisco Chronicle on November 16.*

California has long been at the forefront of the effort to reduce

greenhouse gas emissions. AB 32, the state's climate change law, gave us the opportunity to be the leader in this arena.

The key to success of AB 32 is cost-effective implementation so that we become a model for other states.

Obviously, greenhouse gas reduction is a global problem that California cannot solve on its own.

We need other states to follow our lead to truly create change. That was foremost in my mind this week when the California Chamber of Commerce filed a lawsuit challenging the ability of the California Air Resources Board to continue to carry out its auction where emission credits are sold for the purpose of raising revenue for the state.

While the business community supports the goals of AB 32, it sees the auctions as an illegal levy of a \$70 billion tax on energy users. This is not a plan other states will want to copy.

AB 32 requires California to reduce

carbon emissions to the 1990 level by 2020. Under the law, the air board is authorized to impose a market-driven system. That means it can set levels of emissions for certain industries and, if one company is able to become more efficient in reducing greenhouse gases, a market mechanism will allow it to sell credits to higher emitters or those who cannot cost-effectively reduce their emissions.

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## Commentary By Allan Zarembert

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The air board, however, has gone beyond what is spelled out in the law by also requiring companies to pay for the ability to emit carbon. The only revenue the Legislature authorized the air board to raise is that needed to administer the carbon reduction program. There is no way to know where the money from this carbon tax increase will be spent because there is no law authorizing it.

Over the past two years, repeated calls for the air board to remove the auction element from its cap-and-trade design fell on deaf ears. We were left with no choice other than to sue.

Our goal is for the air board to create a legal, cost-effective approach. This will protect our competitiveness and enable

other states to join us in addressing global climate change. The truly interesting thing about the approach of the air board, by both its own admission and according to a Legislative Analyst's Office report, is that the auction is unnecessary to meet the goals of AB 32.

The chamber's lawsuit does not challenge AB 32 or the merits of climate-change science. It does not challenge a market-based system such as cap and trade. It does call the air board on the carpet for establishing a regulatory program that allocates to itself pollution allowances to sell for profit.

The scheme of raising tens of billions of dollars of revenue for the state under the guise of reducing greenhouse gas emissions is not contemplated in the statute. The Legislature never discussed the auction and never anticipated this result.

The air board's unauthorized tax will result in higher prices on everything from hairspray to gasoline. It certainly will hurt jobs and deter employers from investing in California.

Unless we adopt the most cost-effective and legally sound way of implementing AB 32, we will cede our position as a global leader in greenhouse gas reduction programs.

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*Allan Zarembert is president and chief executive officer of the California Chamber of Commerce.*

## U.S. Agency Releases Proposed Rules on Implementing Health Care Act

*From Page 1*

rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care.

The California Chamber of Commerce is reviewing the proposed federal rules for their impact on employers and how the proposed rules differ from the benchmark plan the state enacted in September.

Instead of merely requiring coverage for at least one drug in each category and class, as noted in earlier HHS bulletins, the proposed rule requires coverage for at least one drug in each class or the number of drugs that the benchmark plan offers, whichever is more.

The health care law set up different levels of health plans and allowed catastrophic-only coverage for some people. The draft rule allows insurers in the small-group market to set higher deductibles to reach a certain coverage level.

In addition, the proposed rule states that consumer-driven plans, such as high-deductible plans linked to health savings accounts, can be acceptable if they meet all the requirements of the law.

HHS officials clarified that benefits don't have to be exactly what the benchmark plan offers, but any substitutions must be made within the same kind of benefits.

Also released was an actuarial value calculator.

### Pre-Existing Conditions

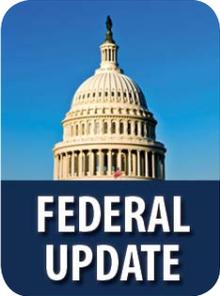
The proposed rule covers numerous questions related to carrying out the health care law's mandate that insurers cover any applicant who applies and allow policyholders to renew, regardless of pre-existing conditions.

By law, only age, tobacco use, where someone lives and family composition may be taken into account. The price of premiums may vary only within a 3:1 ratio for adults based on age (an older person can't pay more than three times as much as a young person).

Regulators have asked how to define which family members may be included

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## State Faces Double Blow from Federal Budget Cuts



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This is on top of the estimated 200,000 jobs that California lost between 2009 and 2012 as a result of defense downsizing.

Sequestration calls for \$1.2 trillion in spending reductions from

fiscal years 2013 through 2021 from both defense and non-defense departments.

Defense spending will be disproportionately affected, however.

The U.S. Department of Defense accounts for 19% of the federal budget but is slated to take 50% of the required sequestration cuts, meaning that the Pentagon must cut \$492 billion in military spending over the next 10 years. This is on top of the \$487 billion already set to be cut from the defense budget over the same decade.

### Lost Military Preparedness

“California will be pummeled once again by severe defense cutbacks just as we are trying to get back on our feet from the recession,” said former California Governor Pete Wilson, who served on the U.S. Senate Armed Services Committee while a member of the U.S. Senate. “California can’t afford to lose one more job. Even more important, our country can’t afford to lose military preparedness,” Wilson said.

“California’s military installations are

vital to our national security and military spending plays a major role in fueling our state’s economy,” Wilson pointed out.

### State Budget Hit

From 2005 through 2009, an average of 1 million jobs was tied to national defense spending in California, more jobs than in the entire Silicon Valley. Over that period, \$600 billion in increased economic output was generated plus \$12 billion in cumulative state taxes.

“Just as voters passed Proposition 30 to raise revenue to fund the state budget, these cuts are going to diminish the pool of earnings and economic output that contribute to state revenue,” said former Governor Gray Davis.

“The additional sequestration cuts can be avoided if Congress adopts thoughtful and responsible approaches to reduce the deficit. We initiated this study to quantify the impacts on California and provide data we felt important for our representatives to consider,” Davis noted.

“The prospect of sequestration is already having a chilling effect on our state’s economy,” said Davis. “Just around the corner, we are looking at \$54.7 billion in defense spending cuts during the first quarter of 2013. This scenario is a nightmare for our hundreds of small defense contractors, many mom and pop shops, who are being forced to face this uncertain future.”

### Major Defense Installations

California continues to have 30 major defense installations, more than any other

state. The closing of 25 others in recent years due to the Base Realignment and Closure (BRAC) program caused enormous economic disruptions.

“Sequestration will make BRAC look like a walk in the park,” said Major General Dennis Kenneally, executive director of the Southwest Defense Alliance.

“The President has directed that military personnel will not be cut so reductions will be in R&D, operations, training, maintenance — services that support boots on the ground. How effective can our men and women in the armed services be without this critical infrastructure?” Kenneally said.

### Leadership Council

Wilson is a member of the Southern California Leadership Council along with former governors Davis and George Deukmejian. He also is honorary chair of the Southwest Defense Alliance.

The Southern California Leadership Conference is a nonprofit, nonpartisan public-policy partnership of business and civic leaders dedicated to improving economic vitality, job growth and quality of life in Southern California.

The Southwest Defense Alliance is a nonprofit, nonpartisan organization focused on preserving and enhancing critical defense missions and assets in the Southwestern United States.

The study covered six Southwestern states. Other states studied were Arizona, Nevada, New Mexico, Texas and Utah.

## U.S. Agency Releases Proposed Rules on Implementing Health Care Act

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on the same policy or whether to leave that question to states and insurers.

HHS also seeks information on the nature and magnitude of one-time fixed costs that insurers may incur in complying with the final insurance market rule, including administrative and marketing costs.

### Wellness Programs

The proposed regulation on wellness programs was released jointly by the secretaries of Labor, Health and Human

Services, and Treasury. It increases the maximum permissible reward for meeting goals in an employer wellness program designed to promote good health or prevent disease among workers from 20% to 30% in 2014.

The proposed regulation would further increase the maximum permissible reward to 50% for wellness programs designed to prevent or reduce tobacco use.

### Comments Due in December

The proposed regulations were published

November 26 in the *Federal Register*, and may be viewed at [www.federalregister.gov/health-care-reform](http://www.federalregister.gov/health-care-reform).

Comments are due to HHS by December 26 on the essential health benefits and pre-existing conditions rules, and by January 25, 2013 on the proposed rules for wellness programs.

CalChamber members with comments on the proposed regulations, please contact [marti.fisher@calchamber.com](mailto:marti.fisher@calchamber.com).

**Staff Contact: Marti Fisher**

# Court Upholds Scientific Approach to Putting Chemicals on Prop. 65 List

## *Automatic Listing Method Not Enough If Substance Fails to Meet Criteria*



A recent decision by the 3rd District California Court of Appeal reinforces the standard for adding chemicals to the state's Proposition 65 list.

The court decided that two chemicals used in a broad range of

consumer products—styrene and vinyl acetate—can't be subject to Proposition 65 restrictions solely for being on a list of "possibly" carcinogenic substances.

The listing must be based on a determination that a chemical is "known" to cause cancer or reproductive toxicity, the court concluded.

### Proposed Listing

The state Office of Environmental Health Hazard Assessment (OEHHA) had proposed adding styrene and vinyl acetate (along with other chemicals) to the Proposition 65 list using Labor Code Section 6382(d).

Products made from styrene range from CD packaging and food containers (polystyrene) to toys, recreational equipment, consumer electronics and medical applications. Fiberglass is a styrene-based material.

Vinyl acetate is used in such products as paints, adhesives, coatings, textiles, wire and cable compounds, laminated

safety glass, automotive plastic fuel tanks and acrylic fibers.

### Listing by Reference

The so-called Labor Code mechanism includes for listing by reference any substance within the scope of the federal Hazard Communication Standard.

The hazcomm standard in turn identifies several sources for establishing a chemical as being cancer-causing or potentially cancer-causing, including monographs by the International Agency for Research on Cancer (IARC).

IARC categorizes styrene and vinyl acetate in a group of chemicals that are "possibly" cancer-causing for humans, as opposed to chemicals "known" to cause cancer in humans and those "probably" carcinogenic to humans, based on sufficient evidence of causing cancer in experimental animals.

Proposition 65, approved by California voters in 1986, requires the Governor to publish a list of chemicals "known to the state to cause cancer or reproductive toxicity." Businesses that manufacture, import or use these chemicals are subject to a variety of restrictions, including posting warnings if individuals might be exposed to a Proposition 65 chemical.

### Earlier Cases

Starting in November 2009, the California Chamber of Commerce asked the 1st District Court of Appeal to reject OEHHA use of the Labor Code mechanism

to add chemicals to the Proposition 65 list. The CalChamber argued that the method would lead to chemicals being added to the list without review from the state's qualified experts. In June 2011, the 1st District Court upheld OEHHA's use of the Labor Code mechanism.

In this year's decision, the 3rd District Court reinforces a statement it originally made in a 1989 decision: that the Proposition 65 list, whatever the method used to add chemicals, "is limited to chemicals . . . know to cause cancer or reproductive toxicity."

The findings in the IARC monograph did not satisfy that standard for styrene and vinyl acetate, and because OEHHA did not propose any other basis for including those substances on the Proposition 65 list, "they must be excluded," the court said.

### Unique to California

Proposition 65 has had a significant financial impact on companies doing business in California. This law, unique to California, places California businesses at a competitive disadvantage to businesses in other states that don't have to follow this law.

This latest court decision reinforces the premise that listing requirements under Proposition 65 should extend only to those chemicals *known* to cause cancer or birth defects.

**Staff Contact: Erika Frank**

## Workers' Compensation Reform Requires Updates to Notice, Pamphlet

As a result of the workers' compensation reform bill enacted this year, there are legally required updates to the state's workers' compensation notice and pamphlets.

California employers must post a notice explaining employee rights and employer obligations under the state workers' compensation system and must provide all employees with a workers' compensation pamphlet at the time of hire.

The California Chamber of Commerce

worked with the Division of Workers' Compensation to obtain approved language for the required workers' compensation notice and pamphlet.

CalChamber-supported SB 863 (De León; D-Los Angeles; Chapter 363, Statutes of 2012), contains wide-ranging workers' compensation reform. SB 863 offsets necessary increases in permanent disability benefits and potentially lowers system costs for employers by reducing delays and

litigation in the system, addressing the lien epidemic, shortening the medical-legal process, implementing an independent medical review system and streamlining the permanent disability schedule.

SB 863 takes effect on January 1, 2013. Some provisions require administrative/regulatory action before implementation.

CalChamber's 2013 employer poster and workers' compensation pamphlet are available at [www.calchamberstore.com](http://www.calchamberstore.com).

# CalChamber Public Affairs Council Hosts Recap of 2012 Election Campaigns

Analyzing the challenges and opportunities of 40 freshmen in the Assembly are (from left) Jeanne Cain, CalChamber executive vice president, policy, with former Assembly Speaker Fabian Núñez; former Assembly Republican Leader Mike Villines; Jason Kinney, Democratic political strategist; and Kevin Sloat, founding partner, Sloat Higgins Jensen and Associates. The panel was on the morning agenda at the CalChamber Post-Election Public Affairs Council Meeting on November 14.



The final panel of the meeting on November 15 features a look at the successes and failures of the 2012 initiative campaigns. CalChamber President and CEO Allan Zaremberg (right) moderates the discussion and analysis by (from left) Paul Mandabach, Winner & Mandabach Campaigns; Christy Wilson, Goddard Claussen/West; and Joel Fox, Small Business Action Committee.



(From left) Becky Warren, Mercury Public Affairs, moderates a panel discussion with online warriors Lara Aulestia, Resonate; Brian Brokaw, Brian Brokaw Consulting; Amy Thoma, Stutzman Public Affairs; and Aaron McLear, The Ginsberg McLear Group, on tweeting, the use of social media and how to reach voters online.



Next Alert:  
December 14



Charles Munger, Jr. (left) comments on what's next on the road to reform.

Campaign strategist Dave Sackett illustrates the mood of the public by the numbers on the second day of the CalChamber Public Affairs Council post-election meeting.



(From left) Rob Stutzman, Stutzman Public Affairs, leads a discussion with Seema Mehta of the *Los Angeles Times* and David Drucker of *Roll Call* about the life of a journalist on the campaign trail.



(From left) Beth Miller, Miller Public Affairs Group, leads a discussion on the 2012 presidential election with Larry McCarthy of McCarthy Hennings Media, and Steven Law of American Crossroads.



Legal experts Jason Kaune (left) and Steve Lucas of Nielsen, Merksamer, Parrinello Gross & Leoni, LLP discuss the changes made to campaign finance law.



Marty Wilson (left), CalChamber vice president, public affairs, moderates discussion on the 2012 legislative races by (from left) Rob Stutzman, Stutzman Public Affairs; Steve Glazer, Glazer & Associates; and retired Senator Jim Brulte, California Strategies, LLC.

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

P.O. BOX 1736 SACRAMENTO, CA 95812-1736  
(916) 444-6670 FACSIMILE (916) 444-6685  
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## Poster Protect<sup>®</sup> keeps you current and in compliance throughout 2013.

 CalChamber<sup>®</sup>



Employment laws can change at any time. In fact, your business could incur significant fines for not posting current California and federal notices.

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If mandatory changes occur during 2013, you'll automatically receive a replacement poster. You pay no shipping, handling or tax for the update.

Keep in mind: Implementation of workers' compensation reform measures continues, which could mean more mandatory changes to that notice in 2013. Save time and money with Poster Protect.

Poster Protect covers mandatory changes to the combined *California and Federal Employment Notices* poster only.

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