

ALERT

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Legislation Helps Create Competitive Tax Climate

Encourages Investment in High-Pay Aerospace Jobs



A California Chamber of Commerce-supported bill creating a more competitive tax

environment in the state passed the Senate Governance and Finance Committee this week.

The job creator bill, **SB 998 (Knight; R-Palmdale)**, encourages investment in California by increasing the cap on the sales and use tax exemption for manufacturing equipment used in new aerospace projects.

The bill is consistent with the goals of CalChamber's 2014 [Solutions for a](#)

Strong California and will help position the state for economic recovery.

High-Pay Jobs

California has long been the home of the world's most advanced aeronautics and aerospace companies. This industry provides thousands of high-pay manufacturing and engineering jobs and millions of dollars in tax revenues.

This industry also has a substantial multiplier effect: it supports thousands of small suppliers and contractors that service large projects.

With the recent announcement by the U.S. Department of Defense to recapitalize
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Governor's Revised Budget Plan Sticks to Reducing Debt, Building Reserve



Governor Edmund G. Brown Jr. this week doubled down on his pledge to reduce state debt while releasing his annual update of the proposed state budget.

While the Governor choked off requests for programmatic spending with one hand, by the other hand he doled out more than a billion dollars to cover rapid growth in the state's health care program for the poor.

New revenues continue to roll into state coffers—adding another \$2.4 billion to an already-flush budget, mostly from higher-income taxpayers. But rather than spending the new taxes on new programs, the Governor has limited his largesse to paying current obligations and clearing out old debts.

He also warned that the economic recovery will, someday, run out of gas, underlining the need for a robust rainy day reserve.

Medi-Cal Spending Increases

The biggest revelation was the acceleration of the state's single most expensive outlay—the Medi-Cal program providing health care for poor Californians.

The Governor announced that the

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Assembly Committee Considers Proposal to Ensure Compliance with Proposition 13



The cloud of uncertainty over property tax assessments may lift soon, as an Assembly committee this week heard a proposal to

clarify what constitutes a "change of ownership" under Proposition 13.

Late amendments to **AB 2372 (Ammiano; D-San Francisco)**, presented to the Assembly Revenue and Taxation Committee, would better define when a sale of a property to multiple owners would constitute an ownership change, which would then trigger reassessment of the property according to the terms of the landmark 1978 initiative.

Jennifer Barrera, policy advocate for the California Chamber of Commerce, told the committee that the CalChamber would add its support to the measure, once the amendments were officially added to the bill.

"When real property truly has a change of ownership, it should be reassessed in accordance with Proposition 13. These amendments will bring clarity and certainty to commercial real estate transactions and ensure compliance with Proposition 13," said Allan Zaremborg, CalChamber president and CEO.

Assemblyman Ammiano had unsuccessfully carried earlier legislation to mandate reassessment under a broader set
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Labor Law Corner

Family Leave: Can an Employer Voluntarily Comply with the Law?



Ellen S. Savage
HR Adviser

Can an employer voluntarily comply with the family leave laws, even if it doesn't have 50 or more employees? What about a large employer offering family leave to employees who work at small branch offices, who otherwise would not be eligible?

Employers that are not covered by the family leave laws, or those which have employees who are not eligible, may in fact end up being required to comply with

those laws by essentially “volunteering” to do so in various ways.

Leave Doesn't Apply to All

Employers with fewer than 50 employees generally are not covered by the federal Family and Medical Leave Act (FMLA) nor the California Family Rights Act (CFRA). This means they are not legally obligated to provide the 12 weeks of leave to which employees of larger employers are entitled for baby bonding, or for the employee's own serious illness or to care for a seriously ill family member.

Businesses that have more than 50 employees and which are covered by the FMLA and CFRA may nonetheless have many employees who are not eligible to take leave because they may work at a small branch location with fewer than 50 employees at that location (or within 75 miles) or perhaps have not been employed long enough or for enough hours to meet the eligibility criteria.

May Create Legal Liability

Even an employer that is not covered by FMLA or CFRA may end up having to comply with those laws based on its employee handbook and other communications with employees.

Under a legal doctrine called “equitable estoppel,” if an employee reasonably relies on information provided by an employer that he/she is entitled to take leave under FMLA and/or CFRA, the laws may be enforced even against an employer that is not covered by them or where the employee was not actually eligible for FMLA or CFRA leave.

If employees reasonably rely on their employer's representation that FMLA/CFRA protections will be provided, several courts have held that an employer may be held to that representation even where it otherwise could have argued it was not legally required to grant the leave.

This may happen where a small employer (fewer than 50 employees) creates an employee handbook that includes an FMLA/CFRA policy.

Alternatively, a large employer (more than 50 employees) that is covered by the FMLA and CFRA might indicate in an employee handbook that even employees who work at small branch locations (who would not otherwise be eligible) may take family leave.

Another circumstance where equitable estoppel may force FMLA/CFRA liability is where an employee who is not eligible requests family leave and is told erroneously the leave is granted.

Avoiding Equitable Estoppel

Although an employer may want to be “fair” to all employees by providing family leave even to those who are not eligible, promising all the legal protections of the FMLA and CFRA may not be wise.

For example, an employer that promises FMLA/CFRA protections to employees even at a small branch location may find itself scrambling to keep the doors open if a large number of those employees all take family leave at the same time with no one to cover their jobs.

Instead, the employer may want to consider offering some alternative version of family leave to ineligible employees, perhaps creating a company policy for a shorter leave with less stringent job return rights than those provided under the laws. The employer in essence can create its own family leave policy, defining benefits rights and rules for paid time off use during the leave.

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

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CalChamber Stops Two ‘Job Killers’ in Assembly Policy Committees

Averts Limit on In-State Energy Development, Increased Workers’ Comp Penalties



Opposition from the California Chamber of Commerce has prevented two “job killer” bills from passing their first policy committees.

• **AB 2420 (Nazarian; D-Sherman Oaks)** placed California businesses at a disadvantage, increased fuel costs, impeded job growth and suppressed property, income and excise tax revenues, by allowing local governments to impose local moratoriums on well stimulation treatments.

AB 2420 failed to pass the Assembly Local Government Committee on April 30, thereby missing the deadline for moving on for consideration by the entire Assembly.

• **AB 2604 (Brown; D-San Bernardino)** unnecessarily increased workers’ compensation system penalties that would have resulted in additional litigation and costs..

AB 2604 never moved out of the Assembly Insurance Committee, missing the May 2 deadline to be sent on for consideration by the Assembly fiscal committee.

AB 2420: Significantly Limited In-State Energy Development

AB 2420 was unnecessary, conflicted with existing law, significantly limited in-state energy development, and placed California businesses at a competitive disadvantage.

• **First**, AB 2420 was unnecessary because local governments already have the ability and authority to impose interim moratoriums on drilling activities on an urgency basis for up to two years if a demonstrated risk to public safety exists.

• **Second**, well stimulation treatments are already highly regulated. Specifically, just last year, SB 4 (Pavley; D-Agoura Hills, Chapter 313) established one of the most far-reaching and stringent measures for well stimulation treatments in the nation.

Any concerns with respect to public safety, mandatory reporting on water use,

disclosure of chemicals used, and air and ground water monitoring are all expressly addressed in SB 4.

Downhole impacts are evaluated by the Division of Oil, Gas, and Geothermal Resources (DOGGR), whose trained engineers, geologists and scientists review and permit all well stimulation activities. DOGGR is currently conducting a comprehensive statewide Environmental Impact Report (EIR), as well as a scientific study of potential impacts of hydraulic fracturing.

• **Third**, local governments lack the expertise to regulate technical activities related to oil and gas drilling.

With the exception of the City of Long Beach, no local jurisdictions in California have a petroleum department with trained personnel that can adequately regulate these activities.

AB 2420 did not require local municipalities seeking to enact a ban to consult with DOGGR or solicit any sort of qualified technical input to determine if a prohibition is necessary, or if a credible threat exists to impose such a prohibition. Accordingly, AB 2420 endorsed the concept of prohibiting in-state energy production without regard to technical and scientific realities.

Perhaps more significant than any of the issues identified above, AB 2420 promoted limiting in-state energy production capability, which will increase the cost of not only fuel, but also of manufacturing and agricultural operations, public transportation, and all goods and services that are energy-dependent. This, in turn, would have placed California businesses at a competitive disadvantage and impeded job growth throughout the state.

Key Vote on AB 2420

AB 2420 failed to pass Assembly Local Government on April 30, 2-3.

Ayes: Levine (D-San Rafael), Rendon (D-Lakewood).

Noes: Achadjian (R-San Luis Obispo), Melendez (R-Lake Elsinore), Waldron (R-Escondido).

Absent/abstaining/not voting: Alejo (D-Salinas), Bradford (D-Gardena),

Gordon (D-Menlo Park), Mullin (D-South San Francisco).

AB 2604: Increased Workers’ Comp Litigation and Costs

California’s workers’ compensation system is already overrun with administrative hurdles, dispute, and unnecessary litigation. In enacting the 2012 workers’ compensation reforms (SB 863; DeLeón; D-Los Angeles; Chapter 363), the Legislature intended to reduce litigation-related expenses in California’s system as a primary means of funding more than \$1 billion in increased disability benefits to injured workers.

AB 2604, as proposed to be amended, ran counter to the Legislature’s intent in enacting the reforms and would have increased litigation by creating significant penalties for unreasonable payment delays that cause or result in either a catastrophic injury or death. Unfortunately, these new penalties would have served as a litigation driver and increased costs throughout the workers’ compensation system.

• **First**, the amount of the penalties—ranging from \$100,000 to \$250,000— incentivized applicant attorneys to file a petition for penalty on an expanded number of claims with questionable merit. At minimum, with the size of the penalties, applicant attorneys would have filed petitions to drive increased settlements.

• **Second**, AB 2604 was drafted so vaguely that it was open to broad interpretation by the Workers’ Compensation Appeals Board (WCAB). This ambiguity opened the door to new and creative legal arguments by applicant attorneys attempting to expand the definition of “catastrophic injury” for purposes of filing penalty petitions.

• **Finally**, AB 2604 forced the WCAB to determine proximate causation issues that—with very limited exception—are not present in the no-fault workers’ compensation system. Proximate cause is a tort concept that includes numerous legal tests and defenses for determining fault. Litigating these issues would have cre-

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state's optional expansion of this program under the Affordable Care Act has resulted in a stunning increase of more than a million additional people with coverage under Covered California (the state's exchange provider) and Medi-Cal, combined.

According to the administration, Medi-Cal will enroll 11.5 million residents in 2014–15—or about 3 in 10 Californians. Even though the federal government will pay for most of the costs of newly eligible enrollees, about 800,000 Californians have enrolled in Medi-Cal under the old rules (they had been eligible all along), meaning California is on the hook for about \$1.2 billion in new spending on Medi-Cal.

For legislative Democrats and interest group advocates who eyed the windfall revenues for enhanced programs and services for California, this is where the money most likely will go.

Paying Debt/Building Reserve

At the same time, the Governor was steadfast in his commitment to pay down state budgetary debt and build up the rainy day reserve.

The administration proposes paying

down slightly more budgetary debt than originally planned, and remained insistent on setting aside 3% of revenues from spending—half of the \$3.2 billion “surplus” will remain in the budget reserve and half will be used to pay off the 10-year-old general obligation budget debt.

The Governor, with the assent of legislative leadership, hopes to institutionalize this behavior by presenting a Rainy Day Reserve proposal to voters in November.



Strengthened through negotiations with Republican leaders, this proposal would make deposits into the reserve whenever capital gains revenues spike above 8% of general tax revenues. In addition, 1.5% of revenues would automatically transfer into the reserve each year.

For the next 15 years, half of each year's deposits would be kept in reserve and half would be used to further reduce

budget debt or other long-term liabilities, like unfunded pension or health care liabilities.

From 2030 on, the entire amount would be kept in reserve. Funds could be withdrawn from the reserve only for emergencies or if the economy takes a downturn.

Teachers Retirement System

Finally, welcome news from the May Revision was the Governor's long-awaited and specific proposal to address the unfunded liability in the State Teachers Retirement System—estimated by the administration at \$74.4 billion.

The Governor proposes to phase in a three-way increase in contributions to stabilize and reduce this liability over 30 years. Under the plan, teachers' contributions would increase from 8% to 10.25% of pay; school contributions would increase from 8.25% to 19.1% of payroll, and the state would pay 6.3% of payroll, up from 3% today, for a grand total of contributions of more than 35% of payroll.

Sticker shock? Maybe, but this is what happens when a problem is ignored for too many years.

The Legislature must approve the budget proposal by June 15.

Contact: Loren Kaye

CalChamber-Sponsored Seminars/Trade Shows

More information: calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. June 10, Santa Clara; August 19, Santa Rosa; September 3, Anaheim. (800) 331-8877.

Business Resources

Aging and Accessibility. Southern California Remodelers Council. May 29, Huntington Beach. (949) 553-9500.

Design/Build Solutions for Aging and Accessibility. Southern California Remodelers Council. May 30, Huntington Beach. (949) 553-9500.

Business Management for Building/Construction. Southern California Remodelers Council. May 31, Huntington Beach. (949) 553-9500.

International Trade

China International Food Exhibition

2014. MEREBO Messe Marketing. May 27–29, Guangzhou, China.

Discover Europe Conference. U.S. Commercial Service and Los Angeles Area Chamber. June 3–4, Los Angeles. (213) 894-8785.

Computex Taipei 2014. Taiwan External Trade Development Council. June 3–7, Taipei, Taiwan. (408) 988-5018.

9th Annual International Trade Outlook. Los Angeles County Economic Development Corporation. June 5, Long Beach. (213) 236-4812.

California-China Cooperation on Climate Change. California-China Office of Trade and Investment. June 5, San Francisco. (415) 946-8737.

Hayward Chamber Luncheon for Japan Consul General. Hayward Chamber of Commerce. June 6, Hayward. (510) 537-3737.

U.S.-Israel Business Mission. U.S. Chamber of Commerce. June 15–16. (202) 659-6000.

The 15th Malaysia International Food and Beverage Trade Fair. Sphere Exhibits Malaysia Sdn Berhad and Mutiara Sigma (M) Sdn Bhd. June 19–21, Kuala Lumpur, Malaysia.

Mongolian Business Summit. U.S. Chamber of Commerce. June 19–21, Ulaanbaatar, Mongolia. (202) 659-6000.

Governor's Mexico Mission Accepting Applications. CalChamber. July 27–30, Mexico City, Mexico. (916) 444-6670.

Ethiopia Business and Investment Forum. Consulate General of Ethiopia in Los Angeles. August 1, Los Angeles. (310) 616-6910.

New Law Supports Job Creation in California's Space Industry



Allan Zarembeg

Recently, Governor Edmund G. Brown Jr. signed [AB 777](#) by Assemblyman Al Muratsuchi (D-Torrance), a bill that will help ensure that California creates a

competitive environment and jobs within the emerging multibillion-dollar space travel and supply industry.

California has long been the home of the world's most advanced aeronautics and aerospace companies. Recently, the industry has seen exciting new innovations and advancement with the privatization of spaceflight transportation.

Opportunity

Historically, the space industry has been within the nearly exclusive purview of the federal government. However, with the government doing less in the areas of space programs and aerospace research, the industry is becoming heavily dependent on the private sector. The space industry is now more closely aligned and reliant on the private sector than ever before. This presents a great opportunity for California's economy.

Commercial space transportation currently delivers satellites into orbit and cargo to the International Space Station. Companies like SpaceX operate huge manufacturing facilities, pay millions in property taxes each year to fund essential

programs like education and health care, and, importantly, they create jobs.

Speaking of jobs, with an average annual salary of \$94,354, employees in California's aerospace industry are paid nearly twice as much as the average salary in California. Furthermore, the industry is tied to 429,216 jobs here.

A problem the industry faced—that has now been fixed—was with an inconsistent tax classification required by the Los Angeles County assessor, which forced them to pay property taxes they should have been exempted from paying in the first place. Smartly, the Board of

potential growth. Not only does the space-flight transportation industry create high-pay manufacturing and engineering jobs for thousands of Californians, it draws billions in foreign and domestic investment.

Space Tourism

When space tourism begins, millions more in revenue will flow into the state in the form of tourism dollars. The growth of this industry is poised, not only to be an economic shot in the arm, but also the next phase of California's innovative prowess.

There is no getting past the fact that California is an expensive state in which to manufacture and do business. As such, it is critical that we help companies control costs and keep expenses as low as possible. Aerospace is an industry that relies on highly skilled and highly paid workers—think rocket scientists. Workers of this caliber are hard to find in other states. Our top-notch universities are key to the success of the industry and the innovation it will need to continue its trajectory skyward.

Aerospace companies have a long, rich history in California. AB 777 will help them add to their story. This new law is an important and encouraging step forward. Job-friendly policies like this will help California come back and come back strong.

Allan Zarembeg is president and CEO of the California Chamber of Commerce. This commentary appeared first with the Los Angeles News Group.

Commentary By Allan Zarembeg

Equalization (BOE) recognized this and opined that the industry qualified for an existing exemption. The Legislature and Governor agreed, seizing the opportunity to correct the problem and provide incentives for job creation here.

Model of Cooperation

While tax experts describe the new law as codifying a BOE opinion, it is so much more than that. This bill creates an opportunity for new investment and new innovation in California. Policymakers need to be doing a lot more of this. AB 777 can serve as a model of cooperation for the private sector, legislative and executive branches to identify and knock down obstacles to well-paid middle class jobs for California.

As we look forward, it is clear that the space industry has the potential for expo-

Register to vote online by May 19. Primary Election is June 3.

calchambervotes.com

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.

Committee Rejects Job Creator Bill Discouraging Frivolous Lawsuits



A California Chamber of Commerce-sponsored job creator bill that aimed to discourage frivolous litigation has been rejected by the Assembly Judiciary Committee.

AB 2095 (Wagner; R-Irvine) sought to limit frivolous litigation regarding itemized wage statements for alleged technical violations that have not injured the employee by awarding attorneys fees to an employer who can prove the litigation was filed in bad faith.

Although AB 2095 would not have eliminated all cases that lack merit, it would have dissuaded the filing of some frivolous cases. Any reduction of bad faith litigation will allow employers to devote more financial resources to growing their business and growing their workforce.

Labor Code Section 226 sets forth eight categories of information that must be included in an itemized wage statement provided to the employee. The intent and purpose of this information is to notify the employee of who his/her employer is and how the wages were calculated.

Failing to include required information in the wage statement can subject the employer to litigation.

Despite the good intentions of this section, there has been a recent trend by plaintiffs' attorneys to abuse it and file litigation for "ticky tack" violations that do not result in any harm to the employee.

A notable example of this abuse is *Elliot v. Spherion Pacific Work, LLC*, 210 WL 675574 (2010), in which an employee alleged a cause of action under Labor Code Section 226 because the employer used a truncated name on the wage statement.

Specifically, the employer's name on the wage statement was "Spherion Pacific Work, LLC," instead of Spherion's legal name, "Spherion Pacific Workforce, LLC."

The employee did not allege that this truncated version of the employer's name misled her, confused her, or caused her any injury. Although the court ultimately dismissed the lawsuit, the employer incurred unnecessary legal costs and attorneys fees to have the case dismissed.

Key Vote

AB 2095 failed to pass Assembly Judiciary on May 6 on a vote of 3-4.

Ayes: Gorell (R-Camarillo), Maienschein (R-San Diego), Wagner (R-Irvine).

Noes: Dickinson (D-Sacramento), Muratsuchi (D-Torrance), Stone (D-Scotts Valley), Wieckowski (D-Fremont).

Absent/abstaining/not voting: Alejo (D-Salinas), Chau (D-Monterey Park), Garcia (D-Bell Gardens).

Staff Contact: Jennifer Barrera

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for iPhone® and iPad®, as well as for Android™ smart phones and tablets.

The free app edition of *Alert* includes all the features of the print edition, such as updates on pending legislation or regulations, including "job killer" bills, that could have a significant impact on how California employers do business; the "Labor Law Corner" column answering California employment law questions; explanations of major court decisions affecting employers and the economy; special reports on the economy, ballot measures and legislative vote records; plus information on CalChamber compli-

ance products and services.

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Assembly Committee Considers Split Roll Parcel Tax Bill

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of conditions, including when stock of publicly traded corporations turned over in the regular course of market activity.

The new amendments are narrower, and target actual abusive behaviors when property owners transfer fractions of ownership to various parties, which eventually add up to nearly the entire ownership changing hands.

It was these abuses that Assemblyman Ammiano targeted with the amendments. As Rex Hime, president of the California Business Properties Association, told the committee, “A sale of the property is a sale of the property.”

AB 2372 was placed on the committee’s suspense file, an interim step before the committee votes on the bill.

Split Roll Parcel Tax



Also due to be considered by the committee is the CalChamber-opposed “job killer” creating a split roll parcel tax at the local level.

SB 1021 (Wolk; D-Davis) authorizes school districts to impose a higher parcel tax on commercial property than residential property.

SB 1021 seeks to redefine the term “special taxes that apply uniformly” to mean special taxes that may be applied discriminatorily and unfairly.

There is nothing in SB 1021 that would prevent the school district from imposing both a parcel tax based upon use as well as a parcel tax based upon square footage, thereby allowing a district to impose layers of taxes against commercial versus residential property.

SB 1021 was assigned to Assembly Revenue and Taxation this week. No hearing date has been set.

Staff Contact: Jennifer Barrera

Legislation Helps Create Competitive Tax Climate in California

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ize certain aerospace equipment, opportunities now exist to attract new investment to the state. The tax structure is among the factors aerospace firms will evaluate when deciding whether to locate new projects in California.

SB 998 adds to a more competitive tax structure by increasing the limit on l

the sales and use tax exemption for new aerospace manufacturing equipment.

The ability to meet the state’s economic needs depends on a healthy and competitive California economy. Improved tax treatment for manufacturing will send a strong message that California favors tax policies which make the state more investment-friendly.

Key Vote

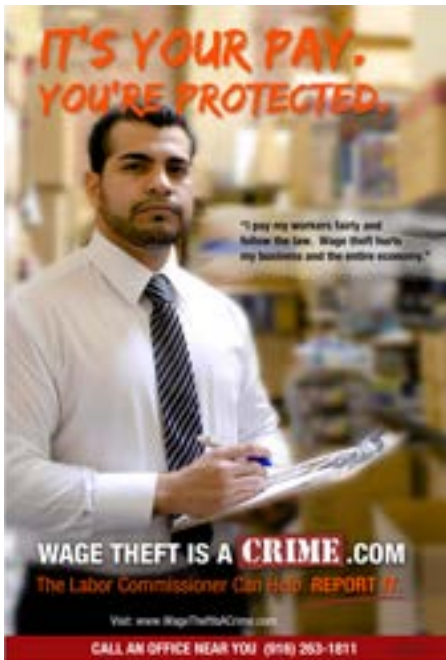
SB 998 passed Senate Governance and Finance on May 14, 6-0:

Ayes: Beall (D-San Jose), DeSaulnier (D-Concord), Hernandez (D-West Covina), Liu (D-La Cañada Flintridge), Walters (R-Irvine), Wolk (D-Davis).

No vote recorded: Knight (R-Palmdale).

Staff Contact: Jeremy Merz

Wage Theft Education Campaign Continues; Poster Cites Impact on Law-Abiding Employers



The poster at left is part of the California Labor Commissioner’s statewide, multilingual campaign to educate workers and employers about wage theft, launched on April 30.

In a message to employer associations, Labor Commissioner Julie A. Su this week reiterated, “My goal is to ensure that all workers receive a just day’s pay for a hard day’s work, and that honest businesses are not forced to compete with labor law violators.”

Featuring the slogan “Wage Theft Is a Crime,” the campaign is aimed at workers in low-wage industries—including janitorial, carwash, construction, agriculture, garment, and hospitality.

Websites have been set up in English and Spanish:

- WageTheftIsACrime.com
- RoboDeSueldoEsUnCrimen.com

More information appeared in the May 2 **Alert**.

CalChamber Stops Two ‘Job Killers’

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ated a civil court-type environment that the workers’ compensation system was designed to avoid.

In opposing the bill, the CalChamber and other employer groups repeatedly pointed out that comprehensive penalties already exist for failure to provide timely payments to injured workers, making AB 2604 unnecessary.

Job Killers

For more information on the remaining “job killer” bills, visit www.calchamber.com/jobkillers.

Staff Contacts: Anthony Samson, Jeremy Merz

July 1 Compliance Alert



If you aren't displaying a required employment notices poster that includes the \$9.00 state minimum wage for July 1, 2014, act now. Mandatory changes to required Workers' Compensation and Paid Family Leave pamphlets also take effect on that date.

By law, employers must post and hand out the most current employment notices, even if you only have one employee in California. Not informing employees of their rights in the workplace can result in costly lawsuits and fines.

Why wait for "or else"? Order your July 1 compliance products today. CalChamber offers **20% off**—while Preferred and Executive members save an extra 20% after their member discount—through June 30.

PURCHASE at calchamber.com/july1c or call (800) 331-8877 with priority code JULC13.

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