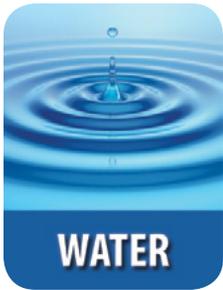


ALERT

VOLUME 40, NUMBER 23 • AUGUST 15, 2014

 **CalChamber**
CALIFORNIA CHAMBER OF COMMERCE

Governor, Lawmakers Put \$7.5B Water Bond on Ballot



The California Legislature passed with bipartisan support Wednesday evening and the Governor signed a \$7.5 billion water bond that includes \$2.7 billion for water storage.

The bond amount to be set aside for water storage projects was the final sticking point in negotiations geared toward reaching agreement before the extended deadline for the Secretary of State to send the voter information pamphlets to the printer.

The new bond replaces the \$11.1 billion November ballot measure that critics, including the Governor, said was too large and contained too much for projects not needed to help resolve state water supply and quality issues.

The compromise proposal includes funding for reservoirs, water use efficiency and recycling, groundwater management, safe drinking water (particularly in disadvantaged communities), watershed restoration and increasing water flows in key rivers and streams.

Senate Republicans, whose support was needed to provide the two-thirds vote required to place the bond on the ballot, pressed to increase the amount set aside for storage from \$2.5 billion proposed on Tuesday by the Governor and Democratic leaders in the Senate and Assembly to the \$2.7 billion in the final agreement.

Roughly \$400 million of the bond amount comes from previous bonds that will require voter approval to be redirected to water projects.

Call for Action

The day before passage of the water bond, Governor Edmund G. Brown Jr., legislative, agricultural, water, environmental, labor and business leaders called for action, underscoring the need to fund infrastructure improvements for the drought-stricken state.

As California Chamber of Commerce President and CEO Allan Zaremborg noted, "Water is the lifeblood of the California economy. Now, in this time of severe drought, we need our elected leaders to come together to find the right balance between addressing our water crisis and reining in debt."

Bond Details

The Water Quality, Supply, and Infrastructure Improvement Act of 2014 includes:

- Regional Water Reliability: \$810 million (\$510 million for integrated regional water management; \$200 million for stormwater capture, \$100 million for water conservation).
- Safe Drinking Water: \$520 million (\$260 million for small community wastewater program, \$260 million for drinking water public infrastructure).
- Water Recycling: \$700 million for statewide water recycling projects and activities.
- Groundwater Sustainability: \$900 million (\$800 million to prevent and reduce groundwater contaminants, \$100 million to provide sustainable groundwater management planning and implementation).
- Watershed Protection, Watershed Ecosystem Restoration, State Settlements: \$1.495 billion (\$327.5 million for

See Deal: Page 3

Stay Tuned for Action as Senate Weighs 'Job Killer' Bills



As *Alert* went to press, the fate of a number of "job killer" bills hinged on action in the Senate. Watch California Chamber of Commerce online channels for the latest updates and prepare to ask

your Senate and Assembly representatives to **oppose** the following "job killers."

Any legislation that increases the cost burden on employers is unacceptable. A recent study shows California businesses average 19% higher operating costs per job than businesses in the rest of the country (see page 4).

Suspense File

The Senate Appropriations Committee was scheduled to consider the following "job killer" bills when reviewing bills sent to the Suspense File last week due to their fiscal impacts:

- [AB 52 \(Gatto; D-Los Angeles\)](#)
[Substantial Expansion of CEQA.](#)

Creates more opportunities for litigation and substantially increases project cost and delay by creating mandatory consultation requirements with Native American Tribes and by requiring lead agencies to analyze a project's impacts to an entirely new resource area called Tribal Cultural Resources.

See Senate Weighs: Page 5

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Labor Law Corner

Process Server May Enter Business Areas Open to Public



Dana Leisinger
HR Adviser

A process server came to our office and wanted to serve papers on our employee. Are we legally required to allow him to come onto company premises and serve our employee?

There is no law mandating that a company must allow process servers onto company premises in order to affect service of process.

Public, Private Spaces

Process can be handled by a private company, a sheriff, or even a marshal, but that doesn't entitle them to come onto a private company to accomplish such.

If your company is open to the public, the process server is as entitled as any other member of the public to come onto the premises to serve your employee.

However, if there is, for example, a small office and a private warehouse not open to the public, there is no automatic right to enter the warehouse.

Individuals also may react strongly when served with eviction notices, dissolution paperwork or any other legal proceeding related to a dissolution (child support, custody, etc.).

Most employers would prefer to keep those emotions out of the business environment and the process servers have multiple search engines available to

research where individuals reside, a more suitable place to serve them.

Establish a Policy

A good practice is to address how to handle these situations in the company policies and practices. Speak with your legal counsel and develop a process of what to do when a process server comes into your business.

If you decide to allow it, you need to train your staff on those policies, particularly your receptionist, who is typically the first person to greet a visitor.

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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Labor Law

HR Boot Camp. CalChamber. September 3, Anaheim. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. October 9, Sacramento. (800) 331-8877.

Business Resources

Olix Awards. Olix Global. September 1-2, Hollywood. (949) 679-6066.

International Trade

California Asian Business Summit.

CalAsian Chamber, Asian and Pacific Islander American Chamber of

Commerce and Entrepreneurship, ChinaSF. September 18-19, San Francisco. (916) 444-7883.

K-TECH Silicon Valley 2014 Conference/Expo. Korea Trade-Investment Promotion Agency (KOTRA) and National IT Industry Promotion Agency (NIPA). September 24-25, Santa Clara. (408) 432-5044.

Trade Expo Indonesia. Ministry of Trade of the Republic of Indonesia. October 8-12, Jakarta, Indonesia.

Tissue Middle East Show. Nile Trade Fairs. October 22-24, Cairo, Egypt.

Quick Answers
to Tough
HR Questions



Heat Illness Coalition Seeking Comments in Building Response to Draft Rule Changes



A growing coalition led by the California Chamber of Commerce continues to seek employer comments on how proposed changes to

the state's unique heat illness prevention rules will affect employers of outdoor workers.

The Occupational Safety and Health Standards Board has opened the rulemaking process on the proposed changes to the heat illness prevention regulation.

The regulation applies to all employers with employees who do any outdoor work. Examples of outdoor workers subject to the regulation (both current and proposed) include landscapers, construction, agriculture, parking lots, outdoor entertainment venues, outdoor maintenance, restaurant patio dining, amusement parks and carnivals, to name a few.

To date, about 80 companies and organizations have joined the heat illness coalition.

Draft Changes

The proposal released August 8 is nearly identical to the draft the Division of Occupational Safety and Health (Cal/OSHA) had posted to its website in late May.

The newest draft is online at www.dir.ca.gov/oshsb/Heat_illness_prevention.html.

A sampling of changes includes:

- **New high heat trigger of 85 degrees; water to be within 400 feet of employees, as well as fresh, pure and suitably cool; shade to be within 700 feet and provided to all employees during rest, meal and recovery breaks.**

- **New duty** to establish a method to acclimate employees, buried in training section (f)(D), and in written procedures section (g) (3), as well as implications that an employer must implement unspecified methods to acclimatize employees when temperatures rise. [(f)(1)(D)]

- **Implications** that a preventative cool down rest break taken by an employee shall be treated as a period of recovery from heat illness, rather than as a preven-

tive measure when an employee feels the need to cool down. [Section (d)(3)]

- **May force employers** to assess all employees for symptoms of heat illness during all breaks in temperatures over 80 degrees.

- **New supervisor and designated employee** (not medical personnel) duties for monitoring, observing and assessing employees for signs or symptoms of heat illness during all breaks in temperatures over 80 degrees. [(d)(4) and elsewhere]

- **Significant new exposure** to "be a supervisor, go to jail" liability.

- **Unprecedented mingling** of wage and hour requirements with health and safety requirements, greatly facilitating private attorney actions to enforce heat illness prevention requirements by mandating **recovery periods exclusively for agricultural employees**, setting a precedent that could spread to all industries. [(e)(6)]

- **Shifting to the supervisor** responsibility for ensuring an employee be afforded a heat break/recovery period/cool-down rest period.

- **Requiring employers** to ensure employees receive emergency medical services.

Coalition Concerns

The coalition is concerned that the proposed changes are unnecessary, overly

burdensome, and would be disruptive to employers already complying with current requirements.

Cal/OSHA has not shown the need for such far-reaching rules nor provided any evidence of necessity to justify the draft changes, despite repeated requests from the coalition.

The proposal is unprecedented in its overly prescriptive approach rather than following Cal/OSHA's long-standing practice of providing performance standards.

The coalition also questions whether the provisions are feasible, enforceable and clear enough for compliance.

Action Needed

The coalition is seeking **responses by September 5** on the real-world impact of the proposed changes to the heat illness prevention regulation. Questions to help focus employer comments are available.

Readers who wish to join the coalition and support maintaining a reasonable approach to heat illness prevention in California are invited to email contact information to heatillness@calchamber.com.

The Standards Board meeting is set for September 25 in San Diego with the public hearing on the draft regulation starting at 10 a.m.

Staff Contact: Marti Fisher

Deal on \$7.5 Billion Water Bond

From Page 1

conservancies, \$200 million for the Wildlife Conservation Board to restore stream flows, \$285 million for the Department of Fish and Wildlife outside the Delta, \$87.5 million to be used in the Delta with restrictions, \$475 million for the Central Valley Project, \$120 million for rivers and creeks).

- **Storage:** \$2.7 billion, including continuous appropriation for water storage projects.

- **Statewide Flood Management:** \$395 million (\$100 million for statewide flood management projects and activities, \$295

million for Delta levee subvention programs and Delta flood protection projects).

Funding eligibility for bond funds requires urban or agricultural water management plans and compliance with the 2009 Water Conservation Act.

The package is Bay Delta Conservation Plan neutral, protects existing water rights and reaffirms area of origin protections.

It also assumes repurposing of about \$400 million from previous water bonds.

Staff Contact: Valerie Nera

California Foundation for Commerce and Education Study

State Businesses Average 19% Higher Costs

California businesses on average have 19% higher operating costs per job than businesses in the rest of the country, according to a study released by the California Foundation for Commerce and Education (CFCE).

Business operating costs in California are on average 16% higher than for firms in large industrial states, and are 10% higher than the average of Western states.

California's per-job costs are higher than every other Western state, and most other large states. The high cost of creating additional jobs puts California at a substantial competitive disadvantage when attempting to retain or attract businesses that have a choice of where to locate.

Among all states, California's cost of doing business ranked 46th, based on cost per job. The state ranked 43rd on a cost-per-firm basis. (These relative rankings differ because California has a greater number of smaller firms with fewer employees than do most other states, which slightly dilutes the cost-per-firm ranking.)

Labor Costs

"The main reason that operating costs are higher in California than in other states are the differences in labor costs," said Loren Kaye, president of CFCE. "These costs include wages, unemployment insurance, workers' compensation and the regulatory and litigation costs that are embedded in an employer's payroll expense. While some of the difference is due to the state's higher cost-of-living, public policy and regulatory mandates account for a substantial portion of the difference."

California businesses pay about 15% more in labor costs than the national average. Employers here pay higher labor costs than every Western state and most large states. Average wages and workers'

compensation costs are substantially above national and regional norms, while unemployment insurance costs are less.

California has the third-highest minimum wage of any state, and is one of

business. CFCE looked at costs for five sample businesses and found these indicators of competitiveness:

- An **automobile manufacturer's** operating costs are 33% higher than the national average. The main drivers for this cost difference are substantially higher wages for skilled employees and higher electricity costs for an energy-intensive process.

- A **computer-programming firm's** operating costs are 18% higher than the national average. The main driver for this cost difference is higher wages for highly skilled employees.

- A **machinist shop's** operating costs are 16% higher than the national average. The main drivers for this cost difference are

higher wages and higher electricity costs.

- An **accounting firm's** operating costs are 15% higher than the national average. The main driver for this cost difference is higher wages for skilled employees.

- An **apparel firm's** operating costs are 14% higher than the national average. The main driver is higher wages.

Andrew Chang & Company, LLC,



Loren Kaye recaps findings of CFCE study on "The Cost of Doing Business in California." See video at www.youtube.com/calchamber.

only three states that require paying overtime after an eight-hour day, instead of the federal standard 40-hour week. The state has one of the friendliest workplace litigation climates, including a private right of action for many labor laws.

Taxes, Energy

California is also less competitive on measures of business taxes (22% higher than national average) and legal costs (15% higher than national average), measured on the job base.

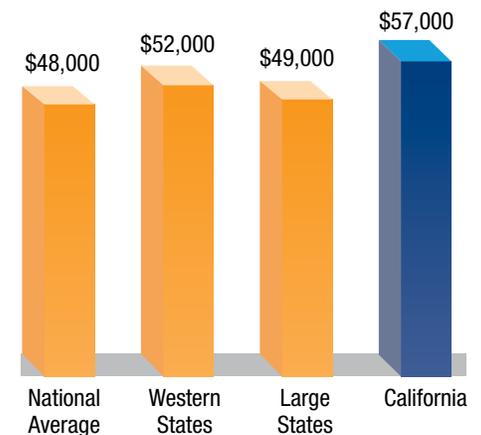
Energy costs are a mixed bag in California. Our rates for electricity and transportation fuels are much higher than the national average, which has discouraged energy-intensive industries from locating here. But those same high costs also create strong incentives for energy efficiency, which has kept operating costs for energy for California businesses at or below the national average.

The bottom line for competitiveness, though, is that for energy-intensive industries, high incremental costs mean more expense to locate or expand in California.

Sampling of Businesses

California's national competitiveness on costs varies depending on the type of

Average cost of doing business (per employee)



State Businesses Average 19% Higher Costs

From Previous Page prepared the study, "The Cost of Doing Business in California," for CFCE.

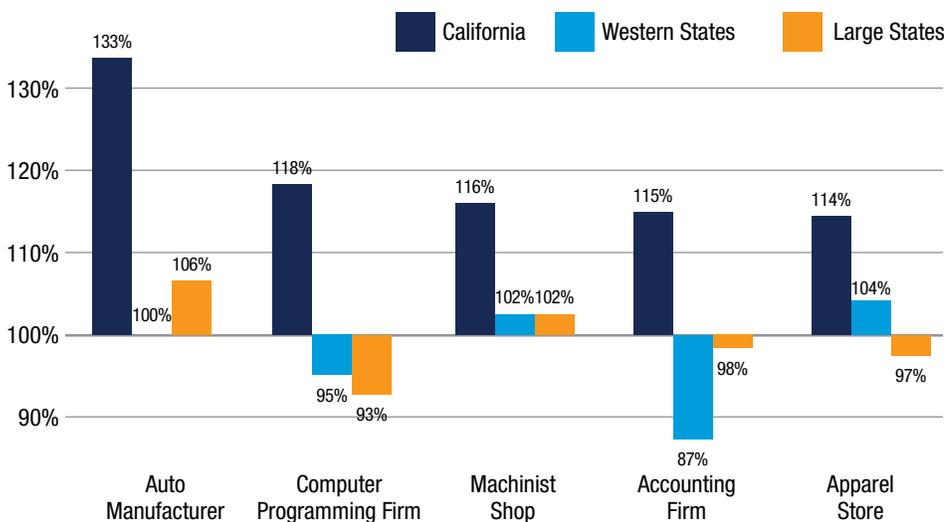
Contact: Loren Kaye

The California Foundation for Commerce and Education is affiliated with CalChamber and serves as a "think tank" for the California business community. The Foundation is

dedicated to preserving and strengthening the California business climate and private enterprise through accurate, impartial and objective research and analysis of public policy issues of interest to the California business and public policy communities.



State costs relative to national average for sample businesses



Senate Weighs 'Job Killer' Bills

From Page 1

• **AB 1522 (Gonzalez; D-San Diego) Paid Sick Leave.** Increases employer mandates by requiring all employers, large and small, to provide all employees in California with paid sick leave, and threatens employers with statutory penalties and litigation under the Private Attorneys General Act (PAGA) for alleged violations.

• **AB 1897 (R. Hernández; D-West Covina) Contractor Liability.** Unfairly imposes liability on a contracting entity for the contractor's wage and hour violations and lack of workers' compensation coverage despite the lack of any evidence that the contracting entity controlled the working conditions or wages of the contractor's employees.

• **AB 2416 (Stone; D-Scotts Valley) Unproven Wage Liens.** Creates a dangerous and unfair precedent in the wage and hour arena by allowing employees to

file liens on an employer's real or personal property, or property where work was performed, based upon alleged yet unproven wage claims.

On Senate Floor

Awaiting a vote by the entire Senate was CalChamber-opposed **AB 2617 (Weber; D-San Diego) Interference with Arbitration Agreements and Settlement Agreements.** Unfairly prohibits the enforcement of arbitration agreements or pre-litigation settlement agreements that require the individual to waive their right to pursue a civil action for the alleged violation of civil rights.

Action Needed

The CalChamber is urging members to ask their Senate and Assembly representatives to **oppose** these "job killer" bills.

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

CalChamber Member Survey Shows Competitiveness Challenges

California business leaders implicitly understand the challenge that California public policy presents to their competitiveness.

In a survey of CalChamber members by the California Foundation for Commerce and Education (CFCE) earlier this year, business leaders reported they are more optimistic about the state's economy than they were two years ago.

Only one-quarter rate the economy "poor," compared with half of respondents two years ago. And a third of leaders believe the economy will continue to get better, compared to only a fifth of respondents two years ago.

More business leaders have already added and are planning to add new jobs next year, than in previous years.

But business leaders still find it much harder to do business in California than in other states. Of those who do business in multiple states, virtually all found it tougher in California.

Once again, the biggest challenge to doing business in California was regulation, identified as the top issue by half of business leaders. Other challenges identified were high state and local taxes, hiring qualified workers, and high health care and labor costs.

Employers overwhelmingly believe state leaders should focus on economic development, keeping the budget balanced, and addressing water supply and drought issues, and improving California labor regulations.

State Task Force Calls for Revitalizing Civic Learning to Boost Voter Participation



A state task force is recommending changes in how civics is taught in public schools to be sure that civic learning is not left behind amid the funding and other reforms sweeping the K-12 system.

“The success of our nation and state depends on educated, informed and active citizens and residents,” states the task force report, *Revitalizing K-12 Civic Learning in California: A Blueprint for Action*.

The report was presented August 5 to California Chief Justice Tani G. Cantil-Sakauye and State Superintendent of Public Instruction Tom Torlakson.

It is the final product of a year-long process during which the task force held regional meetings to hear comments on the state of civic learning in California schools.

The California Task Force on K-12 Civic Learning is co-chaired by Justice Judith McConnell and Sacramento County Superintendent of Public Schools David Gordon. Task force members

include Allan Zaremberg, California Chamber of Commerce president and CEO.

Low Voter Participation

The report’s executive summary points out that the United States ranked 139th in voter participation out of 172 democracies around the world, and that less than half of eligible young people ages 18–24 voted in the 2012 elections.

Another study showed that in California, less than 50% of high school seniors surveyed “viewed being actively involved in state and local issues as their responsibility,” the report noted.

Social Diversity

The report cited the diversity of California society: in 2012–2013, 53% of the state’s 6.2 million K-12 students were Latino, 26% white, 9% Asian, 6% African American and 6% other ethnic groups.

Noting that the Local Control Funding Formula (LCFF) acknowledges the diversity and the need to reduce and remove inequitable outcomes in California public schools, the report asserts that revitalizing civic learning opportunities in an equitable manner can contribute to meeting those goals.

Six proven practices in civic learning have been shown by research to improve the quality and effectiveness of civic learning in schools, the report states. Those practices are: classroom instruction in government, history, law and economics; service learning projects tied

to the curriculum; simulations of democratic processes; extracurricular activities that have a strong civic dimension; student participation in school governance; and discussions of current events and controversial topics.

Recommendations

The task force made a number of systemwide recommendations, “to improve civic learning in *every* district, in *every* school and for *every* child.” Those recommendations include:

- Revising California history and social science standards to include an emphasis on civic learning starting in kindergarten.
- Integrating civic learning into state assessment and accountability systems for students, schools and districts.
- Improving professional learning experiences for teachers and administrators to help them implement civic learning.
- Developing a sequence of instruction in civic learning that draws on the six proven practices.
- Connecting community stakeholders with teachers and students so that students get out of the school building to “practice civic engagement” and civic leaders come into schools to get students involved.
- Providing incentives for school districts to fund civic learning under the new funding plans.

The full report is available at www.powerofdemocracy.org.

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Court: CEQA Doesn't Apply to Local Initiative Adopted by Local Government



The California Supreme Court has held unanimously that the California Environmental Quality Act (CEQA) does not apply to a local voter initiative when the local government body

directly adopts the initiative rather than placing it on the ballot for a special election.

The [August 7 decision](#) is a significant victory for the local land use initiative process and will have a considerable impact on development projects throughout the state.

Local Initiative

The case, *Tuolumne Jobs & Small Business Alliance v. Superior Court (Wal-Mart)*, stemmed from a local initiative to adopt a specific plan for a Wal-

Mart expansion project in Sonoma, California. The initiative proponents gathered signatures from more than 20% of the city's registered voters and subsequently presented the initiative to the city council.

After reviewing the initiative and countervailing arguments, the city council adopted the initiative without conducting CEQA review.

Lawsuit

The Tuolumne Jobs & Small Business Alliance (TJSBA) filed suit, asserting that the city council violated CEQA by adopting the initiative without conducting CEQA review.

Court Ruling

The Supreme Court rejected TJSBA's claim, however, noting that the Election Code precludes application of CEQA in part because the tight timeframes mandated by the Election Code cannot be reconciled with the typical lengthy environmental review process.

Moreover, the court noted that when the Legislature enacted CEQA in 1970, the statutory procedures for enacting voter initiatives were firmly in place, having been codified 60 years earlier.

According to the court, "[I]f the Legislature had intended to require CEQA review before direct adoption . . . it could have easily said so. It did not."

TJSBA warned that the Supreme Court's decision would allow developers to use the initiative process to evade CEQA review, and that direct adoption by a friendly city council could be pursued.

The court rejected TJSBA's position, noting that the "possibility that interested parties may attempt to use initiatives to advance their own aims is part of the democratic process."

A copy of the Supreme Court's decision can be found at www.courts.ca.gov/opinions/documents/S207173.PDF.
Staff Contact: Anthony Samson

Federal Agency Cracking Down on Pay Discrimination



Actions by the federal Equal Employment Opportunity Commission (EEOC) this year demonstrate that discriminatory pay practices continue today.

The EEOC announced on August 4 that it had [settled](#) a lawsuit with a tire company accused of pay discrimination.

The EEOC's lawsuit alleged that a Minnesota tire company discriminated against its female human resources director for nearly two-and-a-half years by paying her lower wages than it paid a male employee who held the very same position. The employer agreed to a \$182,500 settlement.

The EEOC's investigation showed that when the female executive became HR director, she was paid \$35,000 less per year than her male predecessor and \$19,000 less than the minimum salary for

the position under the company's own compensation system. The female executive complained to the company and asked for fair pay, but the company did not make up the difference.

Under federal law, pay discrimination is illegal under the Equal Pay Act of 1963 and under Title VII of the Civil Rights Act of 1964 (which generally prohibits employment discrimination).

Other Cases

The EEOC resolved several matters involving pay discrimination this year, including:

- **[EEOC v. Harmony Public Schools](#):** Settlement of equal pay and retaliation claim brought by teacher who alleged that she was not paid a salary equal to male teachers;
- **[EEOC v. Checkers](#):** Settlement of claim against a fast food restaurant franchise over allegations that female shift managers and cashiers received lower wages than male counterparts even though they did substantially equal work; and
- **[EEOC v. Extended Stay Hotels](#):** Settlement of claim against a hotel over

allegations that female guest service representatives were paid less than male counterparts.

EEOC Priority

Addressing wage discrimination claims is a priority issue for the EEOC, which is a member of the White House Equal Pay Enforcement Task Force.

The settlement requires the tire company to evaluate its pay structure to ensure compliance with the Equal Pay Act and Title VII. If the company discovers employees who are being paid less than required by law, it must immediately raise the wages for those employees. The agreement requires training for the company's managers and employees and allows the EEOC to monitor compliance.

State Law

California employers should note that pay discrimination also is a violation of the state Fair Employment and Housing Act, which prohibits gender discrimination in employment.

Staff Contact: Gail Cecchetti Whaley

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