ALERT

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CalChamber
CALIFORNIA CHAMBER OF COMMERCE

Scheduling Mandate Bill a 'Job Killer' for Retailers

Legislation imposing a one-size-fits-all scheduling mandate on retailers has been identified by the California Chamber of Commerce as a "job killer."

AB 357 (Chiu; D-San Francisco) will dramatically increase the cost of doing business for any entity that conducts "any type of retail sales activity" in California and penalizes the employer by requiring "additional pay" for making changes to the schedule with less than two weeks notice.

The author's office has indicated the bill will be amended to limit it to employers with 500 or more employees in the state and at least 10 retail establishments nationwide.

The bill also creates an *unlimited* amount of protected leave from work and a broad new protected class of employees—those who are receiving public assistance or have an identified family member receiving such assistance.

In addition, AB 357 subjects employers to litigation under the Labor Code Private Attorneys General Act (PAGA), unfair competition law, and common law wrongful termination statutes.

Any Size Retailer

Currently, AB 357 applies to *any* entity that "conducts any type of retail sales activity" in the state, regardless of the size of the employer or the number of employees, and mandates such employers provide two weeks' notice of employee schedules.

The author's office has indicated it plans to amend the bill to limit its application to employers with 500 or more employees in the state and at least 10 retail establishments nationwide that maintain two or more of the listed characteristics, such as standard uniforms or similar signage. Although this amendment narrows the bill, the legislation still potentially has an impact on small businesses that are franchisees and may own only one store, but are part of the larger franchise.

In addition, as set forth below, regardless of the size of employer to whom this bill applies, it is still problematic for any business model and will inhibit the ability to conduct business in California.

Any changes made less than two

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See Capitol Summit: Page 5

CalChamber Capitol Report

Assembly Committee Passes Double Holiday Pay Bill

The Assembly Labor and Employment Committee this week approved a California Chamber of Commerce-**opposed** bill requiring double pay for work on certain days.

During testimony to the committee on **AB 67 (Gonzalez; D-San Diego)** CalChamber Policy Advocate Jennifer Barrera explained that the bill increases costs, creates a competitive disadvantage, and potentially violates employers' constitutional rights by forcing employers to recognize certain days as "family holidays" and compensate all employees with double pay for work performed on those days.

Violates Religious Freedom

AB 67 provides that employers shall compensate an employee at no less than twice the employee's regular rate of pay on a "family holiday," defined as "December 25 of each year" and "the fourth Thursday of November of each year," commonly referred to as Christmas and Thanksgiving.

While the recognition of these holidays may seem benign to some persons, employers who have nonChristian-based beliefs or are immigrants to America might not see the recognition the same way. The Legislature should not mandate

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Inside

Labor Law Corner

Employers May Be Liable for Negligent Referrals on Ex-Employees

Dana Leisinger
HR Adviser

I got a reference request on an employee who we terminated a month ago. The employee left on bad terms and this potential employer had a lot of questions. What information is safe to provide?

Providing references can be a tricky area, and many employers will provide only dates of hire and position held, fearing that if they provide negative information about a former employee, they will be subject to a lawsuit for defamation, even if the statements are accurate. Before limiting your responses, however, there are issues to consider.

Eligible for Rehire

For example, Civil Code Section 47(c) protects employers who respond to the question, "Is this person eligible for rehire?"

The section states: "This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee."

If a former employer states the person is not eligible for rehire, that response alone says a great deal.

Negligent Referral

A problem also can occur with a "negligent referral." This occurs in a number of ways, but the most frequent challenging situation is when an employee leaves after an extremely negative situation—for example, theft, harassment or violence.

When prospective employers call in for references and the prior employer does not reveal any information at all, there can be consequences down the road if the individual continues in the negative behavior.

One case involved an employee who engaged in extremely bizarre behavior, ending in his termination. A neutral referral was provided to a subsequent employer, who also terminated him. That termination, however, was followed by the individual shooting several people who were involved in the termination.

A case such as described above is extreme to say the least; however, it demonstrates the care employers must exercise in this area. There may be a moral responsibility to report extreme behavior, particularly if it relates to the job the former employee is seeking.

The bare minimum of information may not be wise. Nor is it advisable to provide a glowing recommendation on an employee, leaving out negative information that should be disclosed. This is yet another form of negligent referral.

Establish Guidelines

It is best to establish guidelines on how all references will be handled to avoid awkwardness and confusion:

- Draft specific policies. Following those policies will help when those reference calls come in.
- All requests for references should be directed to a specific individual(s).
- Verify the caller's identity. For example, call the company back and ascertain the caller's status.
- Establish whether requests must be in writing or may be verbal.
- Decide exactly what information you will provide. For example, dates of employment, position held, rates of pay and eligibility for rehire.

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-Sponsored Seminars/Trade Shows

More at ***www.calchamber.com/events***.

Labor Law

HR Boot Camp. CalChamber. April 23, San Diego; June 10, Santa Clara; August 18, Sacramento; September 2, Laguna Beach. (800) 331-8877.

Business Resources

Federal/State Basic Payroll Tax Seminar. Employment Development Department. May 15, Carson. (562) 903-2168.

34th National UI Conference. National Foundation for Unemployment Compensation and Workers' Compensation. June 17–19, San Diego. (202) 223-8904.

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CalChamber Calendar

Capitol Summit and Host Breakfast: May 27–28, Sacramento

Assemblyman Speaks with CalChamber Labor/Employment Committee

Photo by Sara Espinosa

Assemblyman Evan Low (D-Campbell) answers questions from the CalChamber Labor and Employment Committee, chaired by Anthony L. Sabatino (right), Securitas Security Services USA Inc., about concerns such as college affordability, technology innovation, the housing crisis in the Bay Area and the unintended consequences of some legislation.

CalChamber-Sponsored Seminars/Trade Shows

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International Trade

Asia/Pacific Business Outlook. U.S. Commercial Service. April 13–14, Los Angeles. (310) 235-7212.

CalAgX Export Training Program. Fresno Center for International Trade Development. April 14, Salinas; April 15, Clovis; April 16, Sacramento. (559) 324-6401.

California-Mexico Trade Initiative. San Diego Regional Chamber. April 19–22, Mexico City, Mexico. (619) 544-1316.

MEXPORT Trade Show 2015. Otay Mesa Chamber. April 23, San Diego. (619) 661-6111.

Ex-Im Bank's Annual Conference. Export-Import Bank of the United States. April 23–24, Washington, D.C. (703) 536-4992.

China-U.S. Business Summit. China-U.S. Business Summit Organizing Committee. April 26–28, Los Angeles. (626) 810-0820.

Making Hay: The Future of U.S. Competitiveness. Monterey Bay International Trade Association. April 30, San Jose. (831) 335-4780.

World Trade Week Kickoff Breakfast. Los Angeles Area Chamber. May 5, Beverly Hills. (213) 580-7569.

SelectUSA Road Show in Mexico. SelectUSA. May 12–14, Merida, Mexico City and Tijuana, Mexico. (202) 482-6800.

Orange County World Trade Week. Irvine Chamber and UPS. May 14, Irvine. (949) 502-4128.

SelectUSA Greater China Road Show. SelectUSA. May 18–29, Hong Kong, Shenzhen, Dongguan, Guangzhou, Shanghai, Shenyang and Dalian, China. (202) 482-6800.

18th Annual International Business Luncheon. World Trade Center Northern California. May 28, Sacramento. (916) 321-9146.

9th World Chambers Congress. International Chamber of Commerce. June 10–12, Torino, Italy.

Korea Overseas Investment Fair. Korea Trade-Investment Promotion Agency. June 24–25, Gyeonggi-do, South Korea. (408) 432-5021.

Stay Informed with Alert App Version 2.0

A new version of the California Chamber of Commerce ***Alert*** app is available for download now.

Besides a new look, Version 2.0 gives readers the ability to search story content. Still available is the ability to download a PDF of the ***Alert*** to read offline.

The search feature is made possible by moving the app to a new publishing platform. Therefore, readers who downloaded the previous version of the app will need to download Version 2.0 at ***www.calchamber.com/mobile***. The previous version of the app is no longer supported and readers with that version do not receive any news updates.

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weeks before the scheduled shift will result in "additional pay" (which is undefined by the bill) to an employee.

Business Realities

AB 357 fails to consider the reality of business demands, fluctuation in customer attendance, or even the expansive list of California-only protected leaves of absence that employers must adhere to that create short-notice schedule changes for employers and employees.

For example, California has more than 20 mandated, protected leaves of absence, in addition to federal leaves of absence. Employees requesting such leaves are not required to provide employers with two weeks' notice, but rather "reasonable notice" (which is undefined by the bill).

Under AB 357, an employer who complies with a mandated leave will be doubly penalized with "additional pay" for accommodating that absence by: 1) changing the schedule of the employee who is requesting the leave; and 2) calling in another employee to cover that shift, with less than two weeks' notice.

Similarly, customer demands and business changes are not always known by the employer two weeks ahead of schedule, which will make it nearly impossible to comply with the scheduling mandate under AB 357. For example, hotels and restaurants constantly suffer from customer changes due to last-minute reservations or last-minute cancellations that are outside the control of the employer.

Under AB 357, a restaurant that has a large party cancel its reservation and, therefore, is losing money already, will be forced to either pay for staff who are not needed or send staff home and suffer a financial penalty due to a last-minute schedule change.

AB 357 precludes any type of flexibility to an employer or employee, as any employer who tries to accommodate last-minute employee schedule requests or last-minute business demands will be subject to financial penalties. This bill harms employers just as much as it does employees.

Unlimited Leaves

AB 357 allows an employee to take an unlimited amount of protected leave from work in order to attend any appointment at the county human services agency.

This mandate on employers will result in last-minute employee absences that will trigger a financial penalty under AB 357 for a schedule change.

It is an unfair predicament in which to place employers by mandating an unlimited leave for an employee that can be taken at any time, without notice, and then financially penalizing the employer for complying with the mandate.

Moreover, an unlimited leave of absence will disrupt an employer's ability to provide two weeks' notice of other employees' schedules, as well as maintain the day-to-day operations of the business.

New Protected Classification

AB 357 also creates a new, protected classification of employees in California, defined as any employee who: 1) receives CalWORKS cash aid; 2) is a parent, guardian or grandparent of one or more children who receive CalWORKS cash aid; or 3) someone who receives CalFresh food assistance.

Under AB 357, an employer would be prohibited from discriminating against or discharging any employee who falls within one of these three categories. Combined with the new, unlimited leave referenced above, this precludes an employer from taking any conservative action against an employee who regularly misses work on a daily, weekly or monthly basis to attend an appointment, for threat of discrimination/retaliation litigation.

There is also no evidence of which we are aware of systematic employment discrimination against employees on this basis that would justify a new, protected classification in California law. As such, this protected classification will simply lead to an increase in litigation as it provides a new basis upon which to sue an employer who takes an adverse employment action for a legitimate reason against an employee who falls within one of these protected categories.

Multiple Litigation Threats

AB 357 adds a new section to the Labor Code, so any alleged violation could be pursued against the employer as a "representative action" under PAGA, Labor Code Section 2699, *et seq.*, with employee-only right to attorneys fees, statutory penalties and interest.

An employee also could threaten to file an unfair competition claim under Business and Professions Code Section 17200, as well as a common law wrongful termination claim. Increasing the cost of doing business on all employers who engage in retail activity with the "additional pay" mandate, as well as subjecting them to multiple threats of litigation, is detrimental to the economy and the ability for businesses to thrive in this state.

San Francisco Ordinance

In December 2014, the San Francisco Board of Supervisors passed the "Retail Workers Bill of Rights" that included a "fair scheduling" mandate, similar to that proposed in AB 357 but notably, much narrower.

Even in this narrower form, San Francisco Mayor Ed Lee refused to sign the ordinance. Less than six months since its passage and before the ordinance takes effect on July 1, 2015, the San Francisco Board of Supervisors is already working on a clean-up measure.

Nevertheless, AB 357 proposes a broader fair scheduling mandate on a statewide basis. California still has areas of high unemployment. The increased costs imposed by AB 357 on California employers will only exacerbate the unemployment problem and create a more hostile business environment.

Staff Contact: Jennifer Barrera

Capitol Summit Registration Opens

Political insiders and California Chamber of Commerce policy advocates will describe the impact of redistricting and primary election reforms on how public policies are developed at the Capitol Summit in Sacramento on May 27.

CalChamber President and CEO Allan Zaremberg will moderate a discussion by political practitioners from both major parties:

• Rob Stutzman, founder and president of Stutzman Public Affairs, a Sacramento-based firm specializing in campaigns, communications and crisis management.

• Robin Swanson, principal, Swanson Communications, a strategic political communications firm.

Following lunch, former Assembly Republican Leader Mike Villines, Villines Group LLC, will moderate as CalChamber policy advocates provide updates on the status of the hottest major policy topics of concern to business.

Host Reception/Breakfast

Following the Capitol Summit, attendees are invited to attend the Sacramento Host Reception, an event co-sponsored by the CalChamber and the Sacramento Host Committee to provide networking opportunities for business leaders from all industries in California to discuss key issues facing the state.

The reception is a prelude to the Sacramento Host Breakfast the following morning, May 28.The Host Breakfast provides a venue at which California's top industry and government leaders can meet, socialize and discuss the contemporary issues facing businesses, the economy and government.

Traditionally, the Governor of California and the chair of the CalChamber Board of Directors speak on issues facing employers in California. Leaders from business, agriculture, the administration, education, the military and legislators from throughout the state are invited to join the discussion.


Allan Zaremberg


Rob Stutzman


Robin Swanson


Mike Villines

Registration

Registration for the Capitol Summit, Host Reception and Host Breakfast is $60. Space is limited. The registration deadline is May 15.

For more information or to register, visit ***www.calchamber.com/2015summit-host***

Staff Contact: Danielle Fournier

Nominations Due April 28

CalChamber Seeks Nominees for Small Business Advocate Award

The California Chamber of Commerce is seeking nominations for its annual Small Business Advocate of the Year Award, which recognizes small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

"Every year the award winners demonstrate how one person speaking out can make a difference," said Dave Kilby, CalChamber executive vice president, corporate affairs. "Nominating that outstanding spokesperson from your community helps bring statewide recognition to the importance of small business advocacy."

Application

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

• Held leadership role or worked on statewide ballot measures;

• Testified before state Legislature;

• Held leadership role or worked on local ballot measures;

• Represented chamber before local government;

• Active in federal legislation.

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

Additional required materials:

• Describe in approximately 300 words why nominee should be selected.

• News articles or other exhibitions as supporting materials.

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

Deadline

Nominations are due by April 28. The nomination form is available at ***www.calchamber.com/smallbusiness*** or may be requested from the Local Chamber Department at (916) 444-6670.

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certain days as more significant based upon religious or cultural beliefs that are not maintained by all.

Further questions about the First Amendment implications of AB 67 were raised during the hearing and directed at Barrera, but she was stopped from answering them by the committee chair, who cited procedural precedent issues.

Watch the full hearing at ***www.calchamber.com/ab67hearing***.

Unavoidable Increase in Costs

Although some employers may close their place of business on a "family holiday" to accommodate their employees, others do not realistically have that option for their business models.

Competitive Disadvantage

AB 67 would also unilaterally increase the cost of doing business only for those employers who have a physical presence in California, thereby automatically placing them at a competitive disadvantage with online companies and out-of-state businesses that would not be subject to this cost.

Recently, the Legislature tried to even the playing field between online retailers and brick-and-mortar stores in the sales-tax arena. AB 67 would further distort this playing field by increasing the cost of doing business for local employers, as opposed to online retailers, who would not have to comply.

Regular Rate of Pay/PAGA Enforcement

Determining the regular rate of pay of many employees requires a detailed calculation that goes beyond just an employee's hourly pay. As defined by the Division of Labor Standards Enforcement, the "regular rate of pay includes a number of different kinds of remuneration, for example hourly earnings, salary, piecework earnings, commissions, certain bonuses, and the value of meals and lodging." While this calculation is performed for overtime purposes, it is subject to good faith errors as to what types of "remuneration" should be included in the calculation.

CalChamber Policy Advocate Jennifer Barrera testifies on AB 67. View the video at *youtube.com/calchamber*.

Due to being included in Section 511.5 of the Labor Code, the provisions of AB 67 are subject to the Private Attorneys General Act (PAGA) (Labor Code Section 2699 et seq.). Therefore, errors in calculating the regular rate of pay or failures to comply with other provisions of this mandate would add another threat of litigation against California employers.

Key Vote

AB 67 passed the Assembly Labor and Employment Committee 5-2.

Ayes: Chu (D-San Jose), Hernández (D-West Covina), Low (D-Campbell), McCarty (D-Sacramento), Thurmond (D-Richmond).

Noes: Harper (R-Huntington Beach), Patterson (R-Fresno).

The bill now heads to the Assembly Appropriations Committee; no hearing date has been set.

Staff Contact: Jennifer Barrera

Assembly Committee Passes Government Data Breach Requirements

SUPPORT

A California Chamber of Commerce-**supported** bill that requires government entities to provide protection when personal information is part of a data breach unanimously passed an Assembly policy committee this week.

AB 259 (Dababneh; D-Encino) requires government agencies to provide theft prevention and mitigation services to California residents if certain personal information maintained by the agencies is breached, and conforms the government data breach requirements with private sector requirements.

Current law requires California businesses to offer theft prevention and mitigation services to individuals if certain personal information was breached and the business was the source of the breach. This personal information includes an individual's Social Security number and driver license number. Providing these services protects against identity theft by helping ensure affected individuals are alerted swiftly that their personal information is being misused.

AB 259 simply extends these requirements to government agencies that maintain this type of personal information. The level of protection an affected individual receives should not depend on the type of entity breached. AB 259 ensures all entities maintaining personal information offer theft prevention and mitigation services.

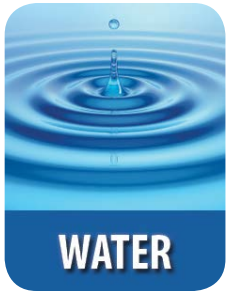
Key Vote

AB 259 passed the Assembly Privacy and Consumer Protection Committee on March 17, 11-0.

Ayes: Baker (R-Dublin), Calderon (D-Whittier), Chang (R-Diamond Bar), Chau (D-Monterey Park), Cooper (D-Elk Grove), Dababneh (D-Encino), Dahle (R-Bieber), Gatto (D-Glendale), Gordon (D-Menlo Park), Low (D-Campbell), Wilk (R-Santa Clarita).

Staff Contact: Jeremy Merz

Water Board Expands Emergency Rules; Emergency Drought Legislation Announced



With a fourth year of severe drought conditions looming, state water regulators this week expanded emergency water rules and the Governor and legislative leaders announced a $1 billion emergency drought package.

The Sierra Nevada snowpack, which provides water as it melts in the spring and early summer, is well below historical averages.

"Since we can't make it rain, we have to manage our resources more efficiently today and in the future. That includes adequate storage and conveyance facilities, plus approving desalination, recycling and reuse operations," said California Chamber of Commerce President and CEO Allan Zaremberg.

The State Water Resources Control Board expanded the emergency water conservation regulation and encouraged water suppliers to do more than the minimum to save water.

"We have to up our game to be more efficient," Governor Edmund G. Brown Jr. said at a news conference. Similar statements came from Senate President pro Tem Kevin de León (D-Los Angeles), Assembly Speaker Toni Atkins (D-San Diego), Senate Republican Leader Bob Huff (Diamond Bar) and Assembly Republican Leader Kristin Olsen (Modesto).

The Governor, legislators and State Water Board all indicated they are ready to take further action on water use if necessary.

Emergency Legislation

The legislation includes more than $1 billion for local drought relief and infrastructure projects to make the state's water infrastructure more resilient to extreme weather events.

The package accelerates $128 million in expenditures from the Governor's budget to provide direct assistance to workers and communities affected by drought and to implement the Water Action Plan.

It also includes $272 million in Proposition 1 water bond funding for safe drinking water and water recycling, and accelerates $660 million from Proposition 1e for flood protection in urban and rural areas.

New Water Use Restrictions

New water use restrictions adopted by the State Water Board on March 17 include:

- Irrigating turf or ornamental landscapes during and 48 hours after measurable precipitation is prohibited.
- Restaurants and other food service establishments can serve water to customers only on request.
- Hotel and motel operators must give guests the option to choose not to have towels and linens laundered daily and prominently display a notice of this option.
- Urban water suppliers must limit to no more than two days per week the number of days that customers can irrigate outdoors.

Continuing Prohibitions

All Californians are prohibited from:

- washing down sidewalks and driveways;
- watering outdoor landscapes in a manner that causes excess runoff;
- washing a motor vehicle with a hose, unless the hose is fitted with a shut-off nozzle; and
- operating a fountain or decorative water feature, unless the water is part of a recirculating system.

The State Water Board said water agencies "should be motivating customers to take even more responsibility for the amount of water used in homes, backyards, businesses, parks and everywhere else."

Other Requirements

Water agencies will be required to notify customers when the agencies are aware of leaks within the customers' control. Monthly reporting requirements are expanded to include the limit on days for outdoor irrigation and a description of compliance and enforcement efforts.

Local agencies can fine property owners up to $500 a day for failing to implement conservation requirements and the State Water Board can issue cease-and-desist orders against water agencies that don't impose mandatory conservation measures on retail customers. Water agencies that violate cease-and-desist orders are subject to civil liability of up to $10,000 a day.

Regulation Next Steps

The emergency regulation adopted by the water board on March 17 will be submitted to the Office of Administrative Law, which has 10 days to approve or deny it. If approved, the regulation will take effect immediately and remain in effect for 270 days,

Water Security

The emergency water conservation rule underscores the related need to fix California's aging water distribution system as well.

The CalChamber is part of a coalition working to promote the Governor's proposed fix to the system through implementation of the Bay Delta Conservation Plan. The coalition includes business leaders, labor unions, family farmers, local governments, water experts and community groups.

For more information, visit ***www.watersecurityca.com***.

Staff Contact: Valerie Nera

Photo: Department of Water Resources

March 2 photo of low water level at Lake Oroville below Enterprise Bridge crossing the South Fork.

ADDRESS SERVICE REQUESTED

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