



*** FLOOR ALERT ***
FILE ITEM # 117

**AB 2895 (HERNÁNDEZ) EMPLOYEE SAFETY: INJURY PREVENTION PROGRAMS
OPPOSE UNLESS AMENDED/JOB KILLER – AS AMENDED AUGUST 2, 2016**

August 17, 2016

TO: Members, California State Senate

FROM: California Chamber of Commerce
American Petroleum and Convenience Store Association
Associated Builders and Contractors of California
Associated General Contractors
California Apartment Association
California Association of Health Services at Home
California Association of Joint Powers Authorities
California Attractions and Parks Association
Chemical Industry Council of California
California Construction and Industrial Materials Association
California Cotton Growers Association
California Cotton Ginners Association
California Farm Bureau Federation
California Framing Contractors Association
California Grocers Association
California League of Food Processors
California Manufacturers & Technology Association
California Professional Association of Specialty Contractors
California Retailers Association
Family Business Association of California

National Federation of Independent Business
Residential Contractors Association
T. R. Jacob & Associates, LLC
Walter & Prince, LLP
Western Agricultural Processors Association
Western Carwash Association
Western Growers Association

**SUBJECT: AB 2895 (HERNANDEZ) EMPLOYEE SAFETY: INJURY PREVENTION PROGRAMS
THIRD READING – AUGUST 17, 2016 – FILE ITEM 117
OPPOSE UNLESS AMENDED/**JOB KILLER** – AS AMENDED AUGUST 2, 2016**

The California Chamber of Commerce and the above-listed organizations must respectfully **OPPOSE UNLESS AMENDED AB 2895 (Hernández)** which has been labeled as a **JOB KILLER**, because it imposes unnecessary and burdensome duties on employers related to the employer's written Injury and Illness Prevention Program (IIPP). The bill also imposes a new private right of action, an enforcement action that provides free discovery for trial attorneys, and increases the risk of class action lawsuits - all at a cost to employers where there is no risk or harm to employees.

AB 2895 requires employers to provide their employees with access to the IIPP, along with various other provisions, including a provision to allow an employee or their authorized representative to request a written copy of the IIPP. A failure of the employer to provide the written copy would be subject to Cal/OSHA enforcement, or injunctive relief that would require the employer to appear in court. This provision would provide a pathway for harassment of employers, and allows multiple requests from multiple employees and representatives. The bill does not consider the burden on the employer in handling multiple requests.

The provisions of **AB 2895** would also be subject to enforcement and attorney fees through the Private Attorneys General Act (PAGA), (Labor Code Section 2698 *et seq.*) which allows employees to pursue civil penalties through the legal system when agencies do not have the resources to do so. PAGA is used extensively by California employees.

In an article of *Los Angeles Daily Journal*, April 16, 2014 titled "An Alternative to Employee Class Actions," it documents that PAGA lawsuits in California have increased over 400% between 2005 and 2013, given the ease of filing such cases without satisfying class action requirements and the potential financial windfall. The Governor's Proposed Budget for 2016 indicates there were over 6,000 PAGA notices filed with the Labor and Workforce Development Agency in 2014. Failure to comply with the provisions of **AB 2895** would be subject to PAGA and add yet another threat of litigation against California employers.

Proposed Amendment. To address any concern regarding employee access to the company IIPP; the coalition proposes removing the current language in the bill and replacing it with the following language:

The Division of Occupational Safety and Health shall develop and propose to the California Occupational Safety and Health Standards Board a regulation to require employers to allow employees access to the employer's Illness and Injury Prevention Program upon request and to inform employees of that right during their initial Illness and Injury Prevention Program training pursuant to Labor Code section 6401.7 (c).

This amendment would allow the employee to access the program upon request without mandating employers to retain a copy in written format at the location as proposed in **AB 2895**.

Further, the proposed amendment would clarify that informing the employee of the right to access the program would be included in existing required training of new employees, instead of creating a new requirement.

Background. Current law requires employers to establish and maintain an Illness & Injury Prevention Program (injury prevention program). Implementation of the program requires employers to provide information to employees at critical times regarding working safely through communication and training that includes:

- A system for ensuring that employees comply with safe and healthy work practices,
- A system to communicate with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health including a system for employees to report hazards to the employer,
- Procedures for identifying and evaluating work place hazards including inspections,
- Training and instruction when the program is first established; to all new employees, for new job assignments; whenever new substances, processes, procedures or new equipment is introduced; whenever the employer is made aware of a new or previously unrecognized hazard; and for supervisors to be familiar with the hazards to which their employees may be exposed; and;
- Documentation of specified actions taken to comply.

The provisions of this bill are overly burdensome and punitive, particularly in light of the fact that this information will be of no use to employees because it consists primarily of the operational and logistical details of the employer's plan. Employees that do not access the written program are not harmed and are not at risk of injury or illness and no need for this bill has been demonstrated. For these and other reasons, we **OPPOSE UNLESS AMENDED AB 2895 (Hernández)** as a **JOB KILLER**.

cc: The Honorable Roger Hernández
Camille Wagner, Office of the Governor
Alma Perez, Senate Labor and Industrial Relations Committee
Jessica Billingsley, Senate Republican Caucus
Senate Office of Floor Analyses
Ralph Lightstone, Labor and Workforce Development Agency
District Offices, Members, California State Senate

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