Job Killer Bills Continue to Advance in Senate

Senate policy committees this week continued to approve California Chamber of Commerce-opposed job killer bills.

The Senate Judiciary Committee passed SB 63 (Jackson; D-Santa Barbara), imposing a new maternity and paternity leave mandate.

The Senate Environmental Quality Committee approved SB 49 (de León; D-Los Angeles), which creates uncertainty and increases potential litigation regarding environmental standards.

New Leave Mandate

SB 63 is a more expansive version of a job killer bill vetoed last year. It will require small employers with as few as 20 employees within a 75-mile radius to provide 12 weeks of protected parental leave for child bonding. It also exposes those employers to the threat of costly litigation.

Both the federal Family Medical Leave Act and the California Family Rights Act apply to employers with 50 employers or more in a 75-mile radius.

Under SB 63, a worksite with only 5 employees will be required to accommodate the mandatory leave if there are other worksites in a 75-mile radius with enough employees to reach the 20 employee threshold, creating a hardship for employers with a limited number of employees at a worksite.

The proposed mandate comes on top of the current requirement that employers with as few as 5 employees allow up to four months of protected pregnancy-related leave. SB 63 will add another 12 weeks of leave for the same employee, totaling seven months of potential protected leave.

Environmental Overreach

SB 49 is an overbroad bill that includes a private right of action for environmental laws similar to the Private Attorneys General Act provisions that have led to shakedown lawsuits for alleged labor and employment law violations.

An attempt to deal with California concerns about the uncertainty at the federal level associated with environmental laws identified in the bill, SB 49 is a premature, overbroad, and vague response to things that could happen in the future while in the present creating substantial uncertainty for businesses in advance of any such potential changes and correspondingly greatly increasing the potential for costly litigation.

SB 49 requires the state agencies to adopt the baseline federal standards in the federal Clean Air Act, the federal Safe Drinking Water Act, the federal Water Pollution Control Act, the federal Endangered Species Act, and “other federal laws” defined as unidentified laws “relating to environmental protection, natural resources or public health.”

If there is interest in preserving various federal environmental laws, the CalChamber believes a targeted approach where state agencies respond to federal action on a case-by-case basis is more appropriate.

Key Votes

- SB 63 passed Senate Judiciary on April 4, 4-1:
  - Ayes: Jackson (D-Santa Barbara), Monning (D-Carmel), Stern (D-Canoga Park), Wieckowski (D-Fremont)
  - Noes: Moorlach (R-Costa Mesa)

No vote recorded: Anderson

See Job Killer: Page 3

CalChamber-Supported Prop. 65 Litigation Reform Passes Policy Committee

A California Chamber of Commerce-supported bill that improves transparency and reduces litigation costs in Proposition 65 cases against California businesses passed an Assembly policy committee this week.

AB 1583 (Chau; D-Monterey Park) won unanimous support from the Assembly Environmental Safety and Toxic Materials Committee.

Proposition 65 was designed to protect California’s drinking water from chemicals known to cause cancer or birth defects, and to warn members of the public about the presence of those chemicals in their environment to help them avoid exposure. Since its enactment, Proposition 65 has helped protect the public by encouraging businesses to reformulate their products and to eliminate the use of listed chemicals.

Proposition 65 Warnings

Proposition 65 requires, among other things, that private businesses with more than 10 employees post warnings when they knowingly expose workers or the public to listed chemicals. These warnings can take the form of placards in business

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Inside

Coalition Blasts Indoor Heat Illness Draft Rule: Page 5
Employer Obligations When Employees Pump Breastmilk at Work

During the work day to express (or pump) returning from pregnancy disability leave, what do I need to provide to the employee? It is not uncommon for an employee returning from pregnancy disability leave or baby-bonding leave to ask for time off during the workday to express (or pump) breastmilk for the employee’s baby. It is important to understand what you, as an employer, have to provide to an employee making such a request.

Breaks

California’s Labor Code requires employers to provide a reasonable amount of break time to an employee for the purpose of expressing milk at work, so you will need to allow an employee to take breaks during the workday to pump milk. The employee can use rest and meal breaks to pump, but if the employee needs additional time beyond those breaks, you will need to provide it.

For nonexempt employees, any additional time off to pump will be unpaid; for exempt employees, the time will be paid. The only exception to the requirement to provide time off is if your operations would be seriously disrupted by providing break time to employees to express breastmilk.

Private Room Requirement

The Labor Code also requires that you provide employees with a place to express milk. You must provide a room or location, other than a toilet stall, that is close to the employee’s work area and that allows the employee to express milk in private. The location can be the employee’s regular work area, if it allows the employee to express milk. You must provide a room or location, other than a toilet stall, that is close to the employee’s work area and that allows the employee to express milk in private. The location can be the employee’s regular work area, if it allows the employee to express milk in private. Assess your workplace and determine how you can meet this requirement. If the employee has her own office, she can pump there. If not, other options may include offering access to an unoccupied office or conference room, or providing a dedicated lactation room for nursing employees.

Reasonable Accommodations

In addition, California’s Fair Employment and Housing Act (FEHA) requires employers to provide reasonable accommodation for conditions related to “pregnancy, childbirth or related medical conditions,” which includes lactation. This could include making accommodations to an employee’s work schedule if it does not allow sufficient time to express milk.

Just like any request for reasonable accommodation, you should assess each request individually to determine what’s reasonable under the circumstances. Consult legal counsel if you are considering denying an employee’s request for a lactation accommodation.

Lastly, breastfeeding and conditions related to breastfeeding are protected characteristics under the FEHA. Do not discriminate against an employee who is breastfeeding or has any conditions related to breastfeeding.

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.

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.


Leaves of Absence: Making Sense of It All. CalChamber. August 18, Sacramento. (800) 331-8877.


See CalChamber-Sponsored: Page 5
Small Employers in Los Angeles Must Provide Paid Sick Leave on July 1

As part of the minimum wage ordinance passed by the City of Los Angeles last year, a mandatory paid sick leave (PSL) law will begin to apply to employers with 25 or fewer employees on July 1, 2017. The PSL rules took effect for employers with 26 or more employees on July 1, 2016.

From an employer perspective, one of the toughest challenges of these local PSL ordinances is that the rules can change at any time. That is precisely what happened with the Los Angeles ordinance when the city recently revised the rules and regulations relating to this ordinance.

FAQ Changes

The city also revised its answers to frequently asked questions (FAQ). Some of these changes or clarifications are important, providing information on topics such as:

- How to determine business size;
- How to pay employees for sick time;
- When an existing paid leave or paid time off policy can satisfy the requirements of the ordinance;
- How to use the frontloading method during the first year that the law applies to an employer and in subsequent years; and
- Whether a maximum cap on accrued hours is allowed.

LA Differs from State Law

The Los Angeles PSL ordinance contains different provisions than the state PSL law. Employers with businesses in a city with a local PSL ordinance need to comply with both the state and the local law. For each provision, protection or benefit, employers will need to provide whichever is more generous to the employee.

Poster Required

The City of Los Angeles requires employers to post a minimum wage and paid sick leave poster. The CalChamber’s Los Angeles Labor Law Posters contains the official notices employers must post in Los Angeles City and Los Angeles County. More information on the Los Angeles minimum wage ordinance can be found on the Office of Wage Standard website, wagesla.lacity.org.

Staff Contact: Gail Cecchettini Whaley

U.S. Chamber Exec Gives Update on Federal Labor/Employment Issues

Allison Dembeck (left), executive director of congressional and public affairs on education, labor and workforce development at the U.S. Chamber of Commerce, answers questions and gives an update on federal labor and employment issues pending under the new administration at a CalChamber Labor and Employment Forum on March 30. Also seated are CalChamber Labor and Employment Committee Chair Anthony L. Sabatino, Securitas Security Services USA Inc.; and Jennifer Barrera, CalChamber senior policy advocate.

Job Killer Bills Continue to Advance in Senate

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(R-Alpine), Hertzberg (D-Van Nuys).

The bill will be considered next by the Senate Appropriations Committee.

- SB 49 passed Senate Environmental Quality on April 5, 5-2:

Ayes: Wieckowski (D-Fremont), Hill (D-San Mateo), Lara (D-Bell Gardens), Skinner (D-Berkeley), Stern (D-Canoga Park).
Noes: J. Stone (R-Temecula), Bates (R-Laguna Niguel).

SB 49 will be considered next by Senate Judiciary.

Staff Contacts: Jennifer Barrera, Louinda V. Lacey
and $26,266,261, respectively.

settlements annually totaled $29,482,280.

In 2014 and 2015, in-court

causing many small businesses to settle

cost several thousands of dollars to litigate,

lawsuits against small businesses over the

plaintiffs have engaged in shakedown

ment in addition to legal fees, certain

penalty collected for successful enforce-

entitles private enforcers to 25% of the

incentivizes individual legal pursuits by

certificate of merit is not discoverable by

cate of merit; however, under current law,

notice must be supported with a certifi-

60-day notice of intent to sue. The 60-day

must serve the alleged violator with a

Proposition 65 lawsuit in court, he/she

or as part of the labeling of a consumer

exist or are released into the environment,

establishments where listed chemicals

Before a plaintiff can proceed with a

Before a plaintiff can proceed with a

AB 1583 does the following:

• Allows the Proposition 65 alleged

violator to obtain the factual basis for the

certificate of merit through normal civil

discovery procedures;

• Requires the Attorney General, if he/

she determines, after reviewing the cer-

tificate of merit and the supporting fac-

tual information filed under Proposition

65, there is no merit to the action, to

to serve a letter on the noticing party and

the alleged violator stating there is no

merit to the action;

• Requires the Attorney General to

maintain a record of any letters served

and to make the information available to

the public on its website, including the

total number of letters served annually

and the names of the noticing parties and

law firms; and

• Requires the Governor’s Office of

Business and Economic Development to

post on its internet website information

relating to a business’s obligations under

Proposition 65.

Making such information available to

the alleged violator during litigation and

requiring the Attorney General to notify

the alleged violator when there is no merit

to the action will assist in reducing litiga-

tion costs and dissuade frivolous lawsuits.

Key Vote

AB 1583 passed Assembly Environmental Safety and Toxic Materials on April 4, 7-0.

Ayes: Arambula (D-Kingsburg),

Chen (R-Walnut), Dahle (R-Bieber),

Friedman (D- Glendale), C. Garcia

(D-Bell Gardens), Holden (D-Paris-

dena), Quirk (D-Hayward).

The bill goes next to the Assembly

Judiciary Committee; no hearing date has

been scheduled.

Staff Contact: Louinda V. Lacey
Indoor Heat Illness: Coalition Criticizes Draft Rule as Too Complex, Burdensome

A coalition of employer groups led by the California Chamber of Commerce this week detailed its objections to a draft regulation to prevent heat illness in indoor workplaces. Coalition members represent employers large and small across many diverse industries. Many members were involved with the development and implementation of the outdoor heat illness regulation, and have significant experience with how to effectively prevent heat illness.

Although legislation enacted in 2016 (SB 1167; Mendoza; D-Artesia; Chapter 839) mandates the indoor heat illness rule be developed, the coalition recommends that data be provided so the regulation can reflect where and in what manner the exposure exists.

The draft proposal creates a program to prevent heat illness for indoor employees that is unnecessarily burdensome, expensive, and overly complex and confusing, the coalition points out in its April 4 letter to state officials in the Division of Occupational Safety and Health (Cal/OSHA), Department of Industrial Relations.

Very few small and medium businesses will be able to comply with this complex proposal without being forced to seek the assistance of an expert consultant, which will be a substantial burden for businesses. The proposal also is unnecessarily prescriptive, going much further than the outdoor heat illness prevention regulation.

Primary Concerns

Too complex. A simpler approach is likely to result in more, not less, employee protection. Greater simplicity will lead to greater protection because greater simplicity will improve employer understanding and compliance.

Too costly. Many employers will not have the expertise to interpret the complex requirements and would have to hire costly staff or consultants. Some employers may not have the requisite resources and could be forced out of business or to cut back. The economic impact of the rule would exceed $50 million, making it a “major regulation” requiring an economic impact analysis.

Overly broad. Indoor workplaces where no hazard is present should not be required to implement policies, procedures, and controls to prevent heat illness. The coalition recommends changes to the proposed scope and application of the rule so it is more appropriately targeted and employers can identify when they are subject to the regulation.

For example, the coalition suggests the indoor heat illness standard apply to employees who work more than half their time indoors and no more than one hour consecutively outdoors.

More stringent than outdoor standard. The requirements for indoor heat exposure are more onerous than those for outdoor heat exposure and not proportionate to the risk posed.

Follow Existing Approaches

The coalition recommends a performance-based approach to the regulation such as that of the Injury and Illness Prevention Program and the outdoor heat illness prevention program. The first step that employers should take is to assess their indoor workplaces for employee exposure to the risk of heat illness. If the employer identifies the risk is present, then the employer must develop a program. If the risk was evaluated and determined not to be present, then the employer would not be subject to the requirements of the heat illness prevention program for indoor employees.

Join Coalition

Readers interested in joining the coalition working to change the indoor heat illness regulation, please contact Marti Fisher, CalChamber policy advocate, marti.fisher@calchamber.com.

CalChamber-Sponsored Seminars/Trade Shows

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International Trade


26th La Jolla Energy Conference. Institute of the Americas. May 24–25, La Jolla. (858) 964-1715.


Business Opportunities in Asia Abound

The many trade and investment opportunities existing in key Asian markets were the common theme of remarks by senior commercial officers from the U.S. Department of Commerce at a recent forum in San Francisco.

The gathering was hosted by law firm DLA Piper, a member of the California Chamber of Commerce, on March 30. The officers focused on key issues, opportunities, and the business climate of the countries represented.

The U.S. Department of Commerce representatives were: James Golsen, executive director for Asia at the International Trade Administration of the U.S. Department of Commerce; Doug Wallace, senior commercial officer, Australia; Rosemary Gallant, senior commercial officer, Indonesia; Andrew Wylegala, minister-counselor for commercial affairs, Japan; David Gossack, senior commercial officer and commercial minister, Korea; Catherine Spillman, counselor for commercial affairs, Malaysia; and Gregory M. Wong, commercial counselor and senior commercial officer, Thailand.

The 90-member business audience was welcomed by Dean Fealk, partner, DLA Piper and vice chair of the Northern California District Export Council (DEC), together with Deep SenGupta, CEO of DSG Global, LLC and chair of the Northern California DEC.

In attendance was Susanne T. Stirling, CalChamber vice president of international affairs, a member of the Northern California DEC and the National DEC Steering Committee.

Asia

The Asia-Pacific region represents nearly half of the Earth’s population, one-third of global gross domestic product (GDP) and roughly 50% of international trade. The large and growing markets of the Asia-Pacific already are key destinations for U.S. manufactured goods, agricultural products, and services suppliers.

During the past decade, however, growth in U.S. exports to Asia has lagged behind overall export growth. The United States is gradually losing market share in trade with Asian countries, which have negotiated more than 160 trade agreements among themselves, while the United States has signed only three with regional economies (South Korea, Singapore, and Australia).

Australia

Australia is the 12th largest economy in the world, with a long-established friendship with the United States. The Australian economy has been growing non-stop for 25 years and the population has a high level of disposable income. Growth opportunities include renewable energy and the health care industry.

In 2016, Australia was the 13th largest importer of California goods and services.

Indonesia

With a population of 257.5 million, Indonesia is the fourth most populous country in the world and represents a sizable consumer market. Half the population is under age 30.

The Indonesian government plays a significant role in Indonesia’s market economy in which it owns more than 160 enterprises and sets prices for goods such as electricity, rice and fuel. Indonesia has the largest economy in Southeast Asia and is a member of both the G20 and Asia-Pacific Economic Cooperation (APEC). It is a slow market to penetrate, but opportunities are to be found, especially in infrastructure development, the power sector and aviation.

Japan

Prime Minister Abe has implemented his “Abeconomics,” including corporate governance reform and government transparency. There is a movement to change the law so that the Prime Minister might stay in office through the 2020 Olympics, which is causing great economic excitement. Related, tourism is booming and gambling has been liberalized to assist this boom.

Although the “3D’s” continue to exist as concerns: debt overhang, deflation and demographics (the fastest-graying population), there are great signs of growth. There are digital and energy opportunities, especially as a result of the recent liberalization of the power sector, which has gone relatively unnoticed.

California continues to be the top exporting state to Japan. Since 2010, Japan has remained California’s fourth largest export market, after Mexico, Canada and China.

Korea

Korea is a significant market for U.S. small and medium-sized companies, which make up a majority of U.S. businesses exporting to Korea. Korea is the 11th largest economy and an economic success story. There are a number of traditional drivers of the economy, i.e., steel, shipbuilding, auto industry, information technology, and electronics, which are now feeling competition from other countries. But there is a new emphasis on the “creative economy,” with R&D and innovation. This transition makes for opportunities for California exporters. During the February 2018 Winter Olympics, 5g technology is expected to be rolled out.

Korea is California’s seventh largest export destination. California is the top exporting state to Korea.

See Business Opportunities: Page 7
Visit Reaffirms Relationship with Canada

The Standing Committee on International Trade of the Canadian House of Commons visited the California Chamber of Commerce on April 4 to reaffirm the importance of the long-standing and important California-Canada trade and investment relationship.

The 12-member delegation representing different provinces and political parties met with Susanne T. Stirling, CalChamber vice president for international affairs.

NAFTA

The possible upcoming renegotiation of the North American Free Trade Agreement (NAFTA) was a topic of discussion. Although there are areas that can be improved, the CalChamber believes that NAFTA serves the employment, trading and environmental interests of California, the United States, Canada and Mexico, and is beneficial to the business community and society as a whole.

The objectives of the CalChamber-supported agreement are to eliminate barriers to trade, promote conditions of fair competition, increase investment opportunities, provide adequate protection of intellectual property rights, establish effective procedures for implementing and applying the agreements and resolving disputes, and to further trilateral, regional and multilateral cooperation.

Trilateral trade within North America is one of the largest economic relationships in the world with more than $1 trillion in goods traded annually. In California alone, more than 1.6 million jobs depend on trade with Canada and Mexico, and more than $100 billion in goods and services are traded between the two countries and California each year.

Strong Two-Way Trade
The United States and Canada enjoy the largest bilateral trade and investment relationship in the world. In 2016, two-way trade in goods between Canada and the United States topped $544 billion, down from $575.2 billion in 2015. Exports to Canada were $265.9 billion, down from $575.2 billion in 2015. Imports from Canada were $278.2 billion, up from $265.9 billion in 2015. The U.S. trade deficit with Canada is $12.2 billion.

According to the most recent figures, U.S. companies invested approximately $353 billion into Canada and foreign direct investment from Canada into the United States amounted to $269 billion.

Canada has remained California’s second largest export market since 2006, with a total value of more than $16.2 billion in 2016 (9.9% of all California exports). California also exports $9.2 billion in services to Canada. California imports $27.8 billion in goods from Canada.

Computers and electronic products remained California’s largest exports, accounting for 32.2% of all California exports to Canada. Exports of agricultural products and food manufactures from California to Canada totaled $3.6 billion, with transportation equipment and chemicals continuing to be strong export sectors as well. California imports from Canada were composed of automobiles, plastics, animal meats, furniture and bedding, and food industry residues.

Jobs
According to the Canadian government, more than 8 million U.S. jobs depend on trade and investment with Canada, which is the top export destination for 35 states. Canada is the United States’ largest and most secure supplier of energy: oil, natural gas, electricity and nuclear fuel. Nearly $2 billion worth of goods and services crosses the Canada-U.S. border daily, which is the equivalent of more than $1 million traded every minute. Approximately 400,000 people cross the Canada-U.S. border daily.

More than 1.16 million California jobs depend on trade with Canada, and 41,200 Californians are employed by Canadian-owned businesses. Nearly 1.8 million people visit California from Canada, spending nearly $2 billion.

Staff Contact: Susanne T. Stirling

Business Opportunities in Asia Abound

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Malaysia
Malaysia has an upper middle economic economy, and is moving toward being a hub for the Association of Southeast Asian Nations (ASEAN) region. Oil and gas, and palm oil are key industries. Growth opportunities exist in aerospace, biotech, and medical devices.

Thailand
In Thailand, opportunities abound in tourism. Bangkok is now the most visited city in the world, bypassing both London and Paris. Related, medical tourism is booming. Thailand is also very open to American franchises.

More Information
For further information, please see the CalChamber country portals at www.calchamber.com/international.
LEARN MORE at calchamber.com/april20 or call (800) 331-8877.