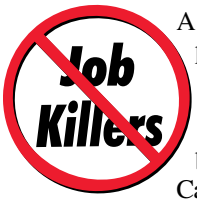
ALERT

VOLUME 43, NUMBER 21 • JUNE 30, 2017

CalChamber
CALIFORNIA CHAMBER OF COMMERCE

State-Run Health Care Bill Stalls in California Assembly



A costly job killer proposal to establish a government-run, single-payer health care system in California has been put on hold in the California Assembly at the direction of the Assembly Speaker.

In a June 23 statement, Assembly Speaker Anthony Rendon (D-Lakewood) said **SB 562 (Lara; D-Bell Gardens/ Atkins; D-San Diego)** was "woefully incomplete" as sent to the Assembly and he had decided the bill "will remain in the Assembly Rules Committee until further notice."

The California Chamber of Commerce put SB 562 on the job killer list because it will cost employers and taxpayers billions of dollars and result in significant loss of jobs in the state.

The financing mechanism for SB 562 remained unspecified even when it passed the Senate on June 1, but was certain to penalize responsible employers and individuals and result in significant new taxes on all Californians and California businesses.

As Rendon pointed out in his statement, "Even senators who voted for SB 562 noted there are potentially fatal flaws in the bill, including the fact it does not address many serious issues, such as financing, delivery of care, cost controls, or the realities of needed action by the

See State-Run Health Care: Page 4

Anti-Arbitration Bill Continues to Advance; Will Create Costly Litigation for Many

The Assembly Judiciary Committee this week approved a California Chamber of Commerce-**opposed** job killer that will worsen the litigation environment and hurt job creation if passed into law.

CalChamber has identified **SB 33 (Dodd; D-Napa)** as a job killer because it unfairly discriminates against arbitration agreements contained in consumer contracts for goods or services with a financial institution, as broadly defined.

The bill also is likely preempted by the Federal Arbitration Act (FAA), violates the rules of the Financial Industry Regulatory Authority (FINRA), and will have a negative impact on "financial institutions" with unnecessary and costly class action litigation that does not ultimately benefit the consumer.

Applies Broadly

Despite recent amendments, SB 33 still applies to more industries than just banks. Its broad definition of "financial institution" includes securities and insurance brokers/agents.

Attorneys Win, Not Consumers

SB 33 precludes the enforcement of a valid arbitration agreement for claims of fraud with a financial institution. The bill is sponsored and supported by trial attorneys who prefer class action litigation

See Anti-Arbitration: Page 4

CalChamber-Backed California WaterFix Moves Forward

With this week's release of biological opinions (BiOps) from federal agencies responsible for protecting species listed under the federal Endangered Species Act (ESA), the California Chamber of Commerce-supported California WaterFix clears a critical permitting threshold.

Biological Opinions Vital Step

After extensive environmental reviews that started under the Obama Administration, the new BiOps released June 26 from the National Marine Fisheries Service and the U.S. Fish and Wildlife Service found the construction and operation of WaterFix would not jeopardize the future existence of ESA-listed species.

CalChamber and the Californians for Water Security coalition supporting WaterFix—representing thousands of businesses, community groups, family farmers, labor unions, water agencies, engineers and public safety leaders from across the state—reiterated their continued support for the project and applauded it clearing this major milestone in the permitting process.

Responsible Solution

"We are encouraged that federal environmental agencies, under presidents from both sides of the aisle, have provided the necessary environmental clearance to move this project forward," said

See CalChamber-Backed: Page 6

Inside

Labor Law Corner

How Medical Appointments, Sick Leave, Make-Up Time Relate

Sunny Lee
HR Adviser

What rights do employers have to approve time off work for doctor appointments, require make-up time and terminate an employee for excessive absences related to medical care?

Time off work for doctor appointments is required of all employers in California and applies to all employees and classifications of employment (hourly, exempt, full-time, part-time, seasonal, temporary, on call, etc.).

When the Healthy Workplaces, Healthy Families Act (the state mandatory paid sick leave) went into effect in 2015, it was clear that regardless of whether an employer had a sick leave policy that allowed employees to use paid sick leave for doctor appointments, the state sick leave law requires it.

Local Ordinances

In addition, many cities have implemented their own local ordinances that require paid sick leave, often requiring more than the California law.

Employers should check the laws that apply in the cities in which they do business and can access a ***Comparison of California State and Local Paid Sick Leave Laws*** on ***HRCalifornia***.

Sick Leave Policies

Employer sick leave policies should include a provision that informs employees of their right to use paid sick leave for medical or dental appointments for themselves and covered family members.

If medical appointments are scheduled in advance, the employer should inform employees that they must provide advance notice. No employer approval is required, however, when an employee schedules a medical or dental appointment. Nor may an employer require that the employee schedule an appointment outside of his or her working hours.

Most medical offices see patients Monday through Friday, 8 a.m.–5 p.m., which often are the same working hours as the employee.

Employers should always allow an employee to go to a doctor appointment and must allow the employee to use paid sick leave if available.

Make-Up Time

Make-up time is a provision in California that allows an *employee* to request that the time taken off work be made up; it is not something that an employer may request or require of the employee.

Make-up time requests must be made by an employee in writing and the time must be made up during the same workweek.

For example, if an employee has a 2-hour doctor appointment and has no paid sick time available, the employee might ask to shorten his/her lunch period from 1 hour to 30 minutes for 4 days that week to make up the loss of 2 hours.

Another option might be for the employee to come in early or stay late, or come in on a day off.

If make-up time is approved, and if an employee works longer than 8 hours in a day or 40 hours in that same workweek, then overtime pay is not required.

All make-up time requests are subject to employer approval. Although employers are not required to provide make-up time, it can be helpful in getting work done when an employee needs to be out.

Medical Condition

If an employee is absent often due to medical appointments, the employee may have an underlying medical condition that would require the employer to accommodate the time off and not terminate the employee.

These protections may fall under the federal Family Medical Leave Act (FMLA), Pregnancy Disability Leave, workers' compensation, Americans with Disabilities Act (ADA) and state disability. For further questions in that area, contact your attorney.

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****.*

Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is $50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.

POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremberg. Executive Editor: Ann Amioka. Associate Editor: Sara Espinosa. Art Director: Neil Ishikawa. Capitol Correspondent: Christine Haddon.

Email: alert@calchamber.com.
Home page: www.calchamber.com.

Next Alert: July 14

LA Demands $1.45 Million Penalty for Violation of Local Minimum Wage Law

The Los Angeles City Attorney's Office and the city's Office of Wage Standards (OWS) announced this week that they are demanding $1.45 million in penalties from Carl's Jr. Restaurants for the alleged failure to comply with the city's minimum wage laws at several Los Angeles locations.

On July 1, 2016, the City of Los Angeles implemented a minimum wage rate of $10.50 per hour for employers with 26 or more employees and $10 per hour for employers with 25 or fewer employees. These rates will increase this week.

The OWS can investigate and take administrative action to enforce the minimum wage.

Employee Complaints Trigger Investigation

The city launched an investigation after receiving a complaint from a Carl's Jr. employee. The investigation into the company's financial records revealed that 37 employees allegedly were not paid the required minimum wage from July 1, 2016, to December 31, 2016.

Carl's Jr. also was cited for allegedly failing to post the mandatory Los Angeles minimum wage and paid sick leave poster at two Los Angeles locations. Employers must post the *OWS Wage and Sick Time Notice* in a conspicuous place at any workplace or job site in English and any other language(s) spoken by at least 5% of the employees at the workplace or job site.

Tough Penalties

The penalty being sought is high: The city is demanding that the company pay $910,010 in penalties to the 37 employees identified in the investigation by July 24, 2017. The city is seeking an additional $541,423 in penalties and fines for alleged violation of the city's minimum wage law, failure to post the required notice and failure to provide investigators access to interview employees at two locations.

In addition, if Carl's Jr. fails to make payments, the city may file a civil action, the city attorney said. A lien also can be placed against any property owned or operated by an employer who fails to pay wages, penalties and administrative fines calculated by the City Attorney's Office.

Under the Los Angeles minimum wage ordinance, employers can be required to:

- Pay back pay for wages not properly paid.
- Pay a fine of up to $120 to each employee whose rights were violated for each day that the violation occurred or continued.
- Pay up to $50 for each day, or part of a day, for each person the employer failed to pay minimum wage.
- Pay up to $500 for any of the following: failing to post any required notice; failing to maintain payroll records; failing to allow OWS access to records; and failing to provide employees required information.
- Pay up to $1,000 if the OWS determines the employer retaliated against an employee.

Subsequent violations may result in even more fines. An employer has the right to an administrative hearing to contest the OWS determinations.

Employer Seeks 'Reasonable' Fine

According to a report from Law 360 (subscription required), Carl's Jr. Enterprises issued a statement saying that after the "inadvertent payroll error" was discovered in April 2017, the affected employees were "swiftly" paid the roughly $5,400 in back wages.

"The [Office of Wage Standards] believes that the fine for this violation should be $1.45 million. … This demand is, on its face, simply unreasonable," the statement says. "It is also unconstitutional in that it disregards the Excessive Fines clause of the Constitution to obtain money that will not go to our employees and will have no connection to the matter at hand."

The company is willing to pay a reasonable fine for the mistake, according to the Carl's Jr statement. "However, given the excessive demands of the [Office of Wage Standards], we have no choice but to defend against any OWS actions," the statement concludes.

Compliance Complexities

This matter highlights the complexity of being an employer in California. Not only must the employer make sure it complies with all California and federal wage-and-hour laws and posting requirements, but the employer also must keep track of the burgeoning number of local ordinances regulating wages, leaves of absences and other employment matters.

Failure to comply can be an extremely costly proposition. Just making the employee whole often won't be enough; the local government may issue fines and penalties.

Local Ordinances Information

California Chamber of Commerce members can learn more about **local ordinances**, like those in Los Angeles City and County, in the new ***HRCalifornia*** section, which includes a **Local Ordinances map** and **Local Ordinances Wizard**.

CalChamber also offers ***California City and County Labor Law Posters*** in the CalChamber Store. To be in compliance on July 1, 2017, employers will need to update their **City of Los Angeles** labor law poster.

Staff Contact: Gail Cecchettini Whaley

State-Run Health Care Bill Stalls in California Assembly

From Page 1
Trump Administration and voters to make SB 562 a genuine piece of legislation."

SB 562 Not Dead

Rendon, who described himself as a longtime supporter of single payer, said he was "encouraged by the conversation begun" by SB 562 and that because 2017 is the first year of a two-year session, keeping SB 562 in Assembly Rules does not mean the bill is dead.

The delay "leaves open the exact deep discussion and debate the senators who voted for SB 562 repeatedly said is needed," Rendon said. "The Senate can use that time to fill the holes in SB 562 and pass and send to the Assembly workable legislation that addresses financing, delivery of care, and cost control."

Unsustainable Costs

The Senate Appropriations Committee has estimated the government-run health care system established by SB 562 would cost approximately $400 billion with an additional 15% payroll tax to fund it.

An "unofficial" funding plan for single-payer health care in California proposed by SB 562 supporters the day before the Senate vote estimated the cost at $330 billion.

The funding plan suggested a 2.3% gross receipts tax on businesses (tax on total gross revenues on amounts over $2 million) and a 2.3% sales tax increase (with a credit of 2% for individuals on Medicaid) or a 6.6% combined payroll tax, instead of the gross receipts tax. SB 562 would increase what is already the highest state sales tax rate and the highest state marginal income tax rate in the entire country.

More Information

For more discussion on the problems with a government-run, single-payer health care system, see:

• The June 16 ***Alert*** **guest commentary** by Loren Kaye, president of the California Foundation for Commerce and Education;

• The CalChamber **Capitol Summit video** update on SB 562.

Staff Contact: Karen Sarkissian

Anti-Arbitration Bill Continues to Advance; Will Create Costly Litigation

From Page 1
over arbitration because the former provides them significantly higher financial recovery.

One recent example of attorney fee awards illustrates this issue—a case in which it was alleged LinkedIn wrongfully used members' contact information. The case settled for $13 million; the funds were divided as follows: $1,500 for the named plaintiffs; no less than $10 per class member; and $3.25 million for attorney's fees and costs.

Unnecessary Litigation

SB 33 creates unnecessary litigation for affected industries to establish that it is preempted under the FAA, as emphasized by a recent U.S. Supreme Court opinion.

On May 16, the U.S. Supreme Court struck down a Kentucky decision that invalidated an arbitration agreement with a nursing home that was executed by family members who had a power of attorney for the patient in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 2017 WL 2039160.

The Kentucky court determined that arbitration was such a significant issue that, in order for the agreement to be valid, the power of attorney form must specifically allow the individual to agree to arbitration on behalf of the principal or, in this case, the patient.

In a 7 to 1 decision written by Justice Elena Kagan, the U.S. high court emphatically rejected the Kentucky court decision. In the opinion, the U.S. Supreme Court re-emphasized that "The FAA preempts any state rule discriminating on its face against arbitration—for example, a 'law prohibit[ing] outright the arbitration of a particular type of claim.'"

SB 33 suffers from the same fatal flaw.

Forcing employers affected by SB 33 to challenge the constitutionality of this law will create further unnecessary litigation. The *Kindred Nursing Centers* case took approximately eight years to finally be resolved by the Supreme Court. Requiring California businesses to exhaust financial resources and time in costly litigation to establish that SB 33 is similarly preempted is unnecessary and will only harm the ability of these businesses to thrive in California.

Conflict with Financial Rules

FINRA is a quasi-governmental, independent regulatory organization that was created and registered with the Securities and Exchange Commission (SEC) in 1938 to protect investors and preserve the integrity of the securities marketplace by regulating, examining, and taking enforcement action against its members, which include nearly 4,000 broker-dealer firms and nearly 650,000 individual brokers.

Specific FINRA Rules require the arbitration of all claims arising out of the business activities of the brokerage firm or broker. There is no exception or exclusion under FINRA Rules for claims of fraud or unlawful use of personal identifying information. Consequently, SB 33 is in direct conflict with FINRA Rules and likely preempted.

Applies to Existing Contracts

SB 33 specifies that its provisions do not go into effect until January 1, 2018. The bill does not limit its application, however, to only those contracts created after January 1, 2018.

This retroactive application of SB 33 to existing contracts with a financial institution that include an arbitration provision will create significant costs and potential litigation for financial institutions.

Key Vote

SB 33 passed the Assembly Judiciary Committee on June 27, 8-3:

Ayes: Chau (D-Monterey Park), Chiu (D-San Francisco), C. Garcia (D-Bell Gardens), Holden (D-Pasadena), Kalra (D-San Jose), Reyes (D-Grand Terrace), M. Stone (D-Scotts Valley), Ting (D-San Francisco).

Noes: Cunningham (R-Templeton), Kiley (R-Granite Bay), Maienschein (R-San Diego).

Action Needed

SB 33 will be considered next by the Assembly Appropriations Committee. The CalChamber is urging members to contact their **Assembly representatives and committee members** to ask them to **oppose SB 33** as a job killer.

Staff Contact: Jennifer Barrera

How Do We Address Housing Crisis? One Incremental Step at a Time


Loren Kaye

Productively addressing California's housing crisis will require a long slog, not a magic bullet. The effective policies are politically treacherous, while the easy victories already have been chalked up.

A broad consensus of nonpartisan policy experts and think tanks point to regulatory and litigation reform, particularly of the California Environmental Quality Act (CEQA), as the highest value policy change that can lead to quicker and less expensive production of needed housing in both infill and suburban locations.

But as Governors from Pete Wilson to Jerry Brown have learned, attempting to reform CEQA is a painstaking and mostly unsuccessful venture.

Subsidies/Mandates

Subsidies for affordable housing have been somewhat more successful, with both taxpayer-supported general obligation bonds and tax exempt financing used to create below-market housing opportunities. Local governments also use their police power to require inclusionary zoning as a condition of project approval.

While these subsidies and mandates have produced some affordable housing, they are highly inefficient. The nonpartisan Legislative Analyst found that "the scale of these programs—even if greatly increased—could not meet the magnitude of new housing required," and that "extending housing assistance to low-income Californians who currently do not receive it... would require an annual funding commitment in the low tens of billions of dollars."

Even more fundamentally, as UCLA economist Jerry Nickelsburg has written, "Prices are not just a supply phenomenon but are rather an interaction between supply, what is available for sale, and demand, what people want to buy."

Elaborating on the San Francisco case, Nickelsburg wrote, "But given the housing stock, many more people want to live in San Francisco than can. An estimate in a [recent paper] found that more affordable housing could increase San Francisco's population by 100 percent or more. So there exists significant demand for San Francisco housing that a moderate change in zoning and building standards will not correct."

Guest Commentary By Loren Kaye

In the absence of sweeping deregulation or massive subsidies, expect only incremental progress to address the housing crisis. The good news is that policy experts continue to seek out opportunities on just these terms.

Good Ideas

The latest contribution of good ideas worth considering comes from the USC Price School Practicum, which prepared a policy paper for the California Foundation for Commerce and Education on ***Building California's Future: Increasing the Supply of Housing to Retain California's Workforce***. (Note: I helped scope the project, but had no role in the research, analysis or writing of the report.)

The Practicum investigated opportunities to increase housing supply affordable to workers without state subsidies that would not require massive regulatory reform. They made several **useful findings**:

• Adaptive reuse can be successful if a city ordinance is adopted and if there is a supply of commercial buildings available.

• A major barrier to the production of accessory dwelling units is the inability to acquire construction loans.

• Grassroots pro-housing advocacy groups can play an important role in protecting developers' rights to build.

Adaptive Reuse

In the context of this report, "adaptive reuse" refers to the process of reusing an old commercial, industrial or warehouse site or building for housing. This can require zoning changes and building modifications and upgrades. On the other hand, when buildings are repurposed using adaptive reuse, developers often see less community opposition.

The Practicum found that a well-designed adaptive reuse ordinance in Los Angeles helped create more than 1,636 infill housing units between 2011 and 2014. By contrast, San Francisco, without an adaptive reuse ordinance, added only 481 of these types of units over that same period.

The takeaway is that successful adaptive reuse development can be replicated in other municipalities if a substantial number of historic/underutilized buildings can be complemented with legislative and process support from the city administration.

Accessory Dwelling Units

Accessory dwelling units (ADUs) are additional, separate housing units that create more housing density compared with existing zoning. Recent legislation in California has somewhat eased the ability to build second units on property already occupied by a dwelling.

The Practicum found:

• A need for more focused efforts to provide lending products to support the creation of ADUs;

• Some of the concerns over the development of ADUs, such as increased traffic or degradation of the neighborhood's aesthetics, do not necessarily materialize; and

• Localities still have unnecessary regulation that chills development of ADUs.

Finally, the Practicum examined the Housing Accountability Act, which places limits on a local government's ability to deny or modify a housing development proposal that complies with general plan and zoning laws.

This law has been strengthened in recent years, broadening the classes of advocates who can use the law to litigate local disapproval of otherwise compliant housing proposals. The Practicum found that grassroots pro-housing advocacy groups can use this tool to support private development proposals, especially for rental housing, and not just development by nonprofits.

More Information

The **full report** and a **briefer synopsis of its findings** are available on the CFCE website at ***www.cfcepolicy.org***.

Loren Kaye *is president of the* ***California Foundation for Commerce and Education****, a nonprofit think tank affiliated with the California Chamber of Commerce.*

Federal Court: Current Drug Use Not Protected Under Disabilities Act

A recent federal court decision is a good reminder that applicants or employees who currently use illegal drugs or marijuana or abuse alcohol are not protected under the Americans with Disabilities Act (ADA) or the Fair Employment and Housing Act (FEHA).

Conduct is key: The disease of addiction may be protected, but misconduct is not.

Current use of drugs, including marijuana, still can be banned at work.

Background

The case, *Scott v. Harrah's LLC* (D. Nev. 2017), involved an employee of Harrah's Hotel and Casino who had worked there about nine years.

The employee informed management that he suffered from drug addiction and voluntarily sought treatment and rehab. Harrah's accommodated his treatment program by adjusting his schedule.

Harrah's suspected that the employee was under the influence of drugs on several occasions after going through rehab. In November 2015, the employee went back to rehab. The next month, Harrah's drug tested him, and the results came back positive. The employee admitted that he used marijuana a couple of weeks before the test. Harrah's allegedly informed the employee that he was not taking rehab seriously and fired him. The employee sued for disability discrimination.

Court Ruling

The court dismissed the employee's lawsuit on the ground that current users are not protected under the ADA. The employee claimed his disability was that he is a drug addict. However, the ADA protects only individuals with a record or history of drug addiction who are *not currently using* drugs and have been successfully rehabilitated. Employers can prohibit illegal drug and alcohol use in the workplace.

"Current use" is broader than just using drugs on the day of a drug test. Courts have held that using drugs in the weeks and months prior to discharge qualifies as current use.

California Law

The same rule applies under California law: A disability under the FEHA does not include "psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs." (Government Code Section 12926(j)).

Furthermore, employers may continue to prohibit marijuana use in the workplace, even though it is now legal for recreational and medicinal purposes, since it still is illegal under federal law.

CalChamber members can read more about drug testing using the ***How To: Oversee Pre-Employment Drug Testing*** in the HR Library on ***HRCalifornia***.

Staff Contact: Gail Cecchettini Whaley

CalChamber-Backed California WaterFix Moves Forward

From Page 1

CalChamber President and CEO Allan Zaremberg. "WaterFix is the responsible solution to secure our state's water deliveries for communities, businesses and residents statewide. It's time to move forward with upgrading our water infrastructure for future years with WaterFix."

Over the last six months, critical strides have been made in moving WaterFix forward, including the issuance of the final Environmental Impact Report (EIR) on December 22, 2016.

The exhaustive review process for California WaterFix reflects nearly a decade of scientific and public analysis, including nearly a year of public review of the EIR, 600 public meetings throughout the state, and responses and revisions based on more than 40,000 public comments, concluding that WaterFix is the only viable plan to protect the state's water supply and the environment. Furthermore, as WaterFix moves toward implementation, rigorous and continuing assessments of habitat and wildlife standards are expected.

For more information on Californians for Water Security, visit ***www.watersecurityca.com***.

Staff Contact: Valerie Nera

CalChamber-Sponsored Seminars/Trade Shows

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

Labor Law

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

HR Boot Camp. CalChamber. August 24, Thousand Oaks; September 6, Beverly Hills. (800) 331-8877.

Meal and Rest Break Rules. CalChamber. September 21, Webinar. (800) 331-8877.

Business Resources

Trademark Tuesday. Silicon Valley U.S. Patent and Trademark Office (USPTO). July 11, San Jose. (408) 918-9900.

Finding the Right Funding. Silicon Valley USPTO. July 15, San Jose. (408) 918-9900.

Design Patent Brown Bag "Lunch and Learn." Silicon Valley USPTO. July 18, San Jose. (408) 918-9900.

International Trade

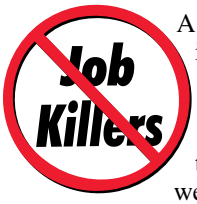
5th Annual Pacific Cities Sustainability Initiative. Asia Society. June 29–30, Los Angeles. (213) 788-4700.

2017 U.S. Business Day. Taipei Economic & Cultural Office, Los Angeles. August 29, Taipei, Keelung City, Taiwan. (213) 380-3644 ext. 103.

Expanding Horizons: Workshop for Small Businesses Entering Emerging Markets. Overseas Private Investment Corporation (OPIC). September 19, Oakland. (800) 814-6548.

10th World Chambers Congress. Sydney Business Chamber, The International Chamber of Commerce, and The International Chamber of Commerce World Chambers Federation. September 19–21, Sydney, Australia.

Fiscal Committee Next Stop for New Maternity/Paternity Leave Mandate



A job killer bill mandating a new protected leave of absence passed the Assembly Judiciary Committee this week, less than a week after winning approval at its first Assembly policy committee hearing.

SB 63 (Jackson; D-Santa Barbara) unduly burdens and increases costs of small employers with as few as 20 employees by requiring 12 weeks of protected employee leave for child bonding. It also exposes employers to the threat of costly litigation.

The California Chamber of Commerce has identified SB 63 as a job killer because the legislation targets and could significantly harm small employers in California with as few as 20 employees by adding to the existing burden under which they already struggle. Governor Edmund G. Brown Jr. vetoed a similar, but narrower, proposal just last year.

SB 63 prohibits an employer from refusing to allow an employee to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement if the employee has more than 12 months of service with the employer; has at least 1,250 hours of service with the employer during the previous 12-month period; and works at a worksite in which the employer employs at least 20 employees within 75 miles.

SB 63 also prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.

Coalition Opposition

The CalChamber and coalition of employer groups and chambers of commerce opposing SB 63 have been pointing out that SB 63:

• **Creates a combined 7-month protected leave of absence on employers.** California employers with 5 or more employees already are required to provide up to 4 months of protected leave for an employee who suffers a medical disability due to pregnancy. SB 63 will add another 12 weeks of leave for the same employee.

• **Could affect worksites that have substantially fewer than 20 employees.** SB 63 is applicable to any employer that has 20 or more employees within a 75-mile radius. Employees at multiple worksites are aggregated together to reach the employee threshold. Accordingly, a worksite that has only 5 employees will be required to accommodate this mandatory leave if there are other worksites in a 75-mile radius that have enough employees to reach the 20 employee threshold.

• **Imposes a mandatory leave with no discretion to the employer.** The leave under SB 63 must be given at the employee's request, regardless of whether the employer has other employees out on other California-required leaves.

• **Imposes additional costs on small employers that are struggling with the increased minimum wage.** Although the SB 63 leave is not "paid" by the employer, while the employee is on leave, the employer will have to maintain medical benefits, pay for a temporary employee to cover for the employee on leave (usually at a higher premium) or pay overtime to other employees to cover the work of the employee on leave.

• **Exposes small employers to costly litigation.** Labeling an employer's failure to provide the SB 63 leave as an "unlawful employment practice" exposes an employer to costly litigation under the Fair Employment and Housing Act (FEHA).

An employee who believes the employer did not provide the 12 weeks of protected leave, failed to return the employee to the same or comparable position, failed to maintain benefits while the employee was out on the 12 weeks of leave, or took any adverse employment action against the employee for taking the leave, could pursue a claim against the employer seeking: compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees

The cost for a small- to mid-size employer to defend and settle a single plaintiff discrimination claim is approximately $125,000, according to a 2015 study by insurance provider Hiscox.

Key Vote

SB 63 passed the Assembly Judiciary Committee, 9-1, on June 27:

Ayes: Chau (D-Monterey Park), Chiu (D-San Francisco), C. Garcia (D-Bell Gardens), Holden (D-Pasadena), Kalra (D-San Jose), Maienschein (R-San Diego), Reyes (D-Grand Terrace), M. Stone (D-Scotts Valley), Ting (D-San Francisco).

Noes: Kiley (R-Granite Bay).

Not voting: Cunningham (R-Templeton).

Action Needed

SB 63 will be considered next by the Assembly Appropriations Committee. The CalChamber is urging members to contact their **Assembly representatives and committee members** to ask them to **oppose SB 63** as a job killer.

Staff Contact: Jennifer Barrera

ADDRESS SERVICE REQUESTED

HR Expert & Business Advocate™

P.O. BOX 1736 SACRAMENTO, CA 95812-1736
(916) 444-6670 FACSIMILE (916) 444-6685
www.calchamber.com

CALIFORNIA CHAMBER OF COMMERCE
ALERT

Periodicals
Postage
PAID
Sacramento, CA