

# ALERT

## Assembly Judiciary Passes CalChamber-Opposed Bills



California Chamber of Commerce policy advocates this week highlighted for the Assembly Judiciary Committee problems with two employment-related bills.

Even so, on April 24 the committee approved, 7-3, a bill banning arbitration agreements, and a bill that would expand pathways for costly litigation against employers for sexual harassment claims passed 8-2.

### Ban on Arbitration Agreements

Jennifer Barrera, senior vice president, policy explained to the committee why **AB 3080 (Gonzalez Fletcher; D-San Diego)** is a **job killer** bill that

could significantly expand employment litigation and increase costs for employers and employees by banning settlement agreements for labor and employment claims as well as arbitration agreements made as a condition of employment.

Focusing on the benefits of arbitration Barrera told the committee: "Arbitration does not eliminate your substantive rights. If it's unlawful in a court, it's unlawful in arbitration. The California Supreme Court, the United States Supreme Court have already stated that an arbitration agreement cannot waive your substantive rights. Otherwise it's unenforceable."

Refuting the proponents' assertions that arbitration denies low-wage employees access to justice, Barrera explained

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## CalChamber-Backed Regulatory Reform Bills Pass Assembly Committee



Three California Chamber of Commerce-supported regulatory reform bills passed the Assembly Accountability and Administrative Review Committee this

### SUPPORT

week with bipartisan support.

- **AB 2087 (Waldron; R-Escondido)** enhances California's ability to deliver services by improving and updating our state's information technology systems to take advantage of modern technologies.

- **AB 2971 (Calderon; D-Whittier)** will save taxpayer dollars, streamline government operations, improve public services, and reduce duplication and waste without compromising public policy goals of regulations by requiring state agencies to review all existing regulations to identify overlap, duplication, inconsistencies or provisions that are out of date, and report the findings to the Legislature.

- **AB 2671 (Fong; R-Bakersfield)** promotes greater accountability, transparency, improved efficiency and modernization of regulations by requiring agencies to review their regulations, as well as to submit major regulations to the Legislature for review, which paves the way to effective and least burdensome regulations.

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CalChamber Senior Vice President Jennifer Barrera explains to the Assembly Judiciary Committee on April 24 why the anti-arbitration provisions of AB 3080 (Gonzalez Fletcher; D-San Diego) make it a job killer. See video at [calchamberalert.com](http://calchamberalert.com).

### Inside

**Protect Victims, Employers from Lawsuits: Page 3**

## Labor Law Corner

# Issues to Consider If You Cut Short a Quitting Employee's Time at Work



**David Leporiere**  
HR Adviser

*An employee who has been something of a problem for the company came to me today, and stated that she was quitting. She told me she was giving me two weeks' notice, and that her last day would be a week from Friday. I'm concerned that this employee will be disruptive during these next two weeks, and I'd rather not have her creating problems. Can I tell her that*

*today can be her last day, and that we're accepting her resignation effective today rather than in two weeks?*

Assuming you don't require two weeks advance notice in your employee handbook, the simple answer is "yes."

If you cut short the employee's intended length of employment, however, there will be some consequences of which you need to be aware.

If you tell the employee that her last day is today, rather than in two weeks (as the employee has requested), for purposes of final pay rules and unemployment insurance, the separation from employment will be considered an involuntary termination and not a voluntary quit.

As a result, you will need to provide the employee with a check for all wages due and owing, including any accrued and unused vacation or paid time off (PTO) at the time you tell her you are ending her employment.

If you were to allow the employee to work the next two weeks, her final wages would be due on her last day of employ-

ment, since she gave you more than 72 hours' notice of her intent to quit.

In addition, if this employee files for unemployment insurance, she will be entitled to benefits as the Employment Development Department will consider the separation to be "involuntary," since the employee had stated her intent to work for two additional weeks, and the employer decided to end the employment at an earlier date.

The employee would likely have been disqualified from receiving benefits if you allowed her to work during the two weeks of her notice of resignation, but since you cut short that timeline, she will now be eligible to receive unemployment benefits.

*Column based on questions asked by callers on the Labor Law Helpline, 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](http://www.hrcalifornia.com).*

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## CalChamber-Sponsored Seminars/Trade Shows

More at [www.calchamber.com/events](http://www.calchamber.com/events).

### Labor Law

**Bundle of Labor Laws: PDL, California's New Parental Leave, and Baby Bonding Under FMLA and CFRA.** CalChamber. May 17, Webinar. (800) 331-8877.

**Lead the Charge: Preventing Sexual Harassment in Your California Workplace.** CalChamber. May 29, Sacramento; September 17, Pasadena. (800) 331-8877.

**HR Boot Camp.** CalChamber. June 5, Santa Clara; August 21, Sacramento; September 5, Long Beach. (800) 331-8877.

**You Can't Fight City Hall and Their Local Ordinances.** CalChamber. June 14, Webinar. (800) 331-8877.

**Leaves of Absence: Making Sense of It All.** CalChamber. June 21, San Diego; August 10, Oakland. (800) 331-8877.

**HR Checklist for California Supervisors.** CalChamber. September 20, Webinar. (800) 331-8877.

### Business Resources

**National Small Business Week IRS Webcasts.** April 30–May 4.

**TECHSPO LA 2018.** TECHSPO. June

13–14, Santa Monica. (800) 805-5385.

### International Trade

**California-Mexico Partnership, Innovation and Education in Clean Energy.**

CalChamber. May 1. (916) 444-6670.

**California-China Business Summit.**

China Week and The Milken Institute. May 3, Beverly Hills. (626) 658-7944.

**World Trade Week Kickoff Breakfast.**

Los Angeles Area Chamber. May 4, Los Angeles. (213) 580-7569.

**Water and Agriculture Technology**

*See CalChamber-Sponsored: Page 3*

## CalChamber Calendar

### Capitol Summit:

May 23, Sacramento

### International Forum:

May 23, Sacramento

### Water Committee:

May 23, Sacramento

### Board of Directors:

May 23–24, Sacramento

### Host Breakfast:

May 24, Sacramento



# Harassment Victims and Employers Need Protection from Defamation Lawsuits

In 2016, 554 Californians filed sexual harassment complaints with the state civil rights agency, and many other employees have complained directly to employers without involving a state agency.

But in none of these cases was an employer free to warn another employer that a prospective employee was found to be a sexual harasser, lest they be subject to a costly lawsuit for defamation.

Worse, even the victim may be subject to allegations of defamation or emotional distress for merely making those charges — first, harassment at work, then harassment in the legal system.

Outrageous as it may seem, harassers are attempting to wriggle out of their self-imposed predicaments by filing defamation lawsuits against those seeking justice. Harassers are also suing former employers for defamation when the latter advise prospective employers that the job seeker was terminated because of sexually harassing behavior.

California law and regulations quite clearly require employers not only to take reasonable steps to prevent and promptly correct harassment, but to conduct an impartial and timely investigation upon receiving a complaint.

## Employers, Victims Get Sued

Nonetheless, employers and harassment victims have been sued for following the law and exercising their rights:

- An employee was discharged by his employer following allegations of sexual harassment, including unwelcome comments and unwanted touching. He then sued the employer for defamation during the investigation of the allegations, alleging the company had falsely accused him of sexual harassment. The appellate court allowed the lawsuit to go forward because there was no clear basis on which to dismiss the claim.

- In another case, a sexual harassment victim was countersued for defamation and infliction of emotional distress by her alleged perpetrator after he was named in a suit arising from her victimization.

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## Commentary

By Nancy Lindholm  
& Jennifer Barrera

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Nancy Lindholm



Jennifer Barrera

- An alleged harasser brought libel and slander causes of action against the victim because of the statements she made in her complaint to the company's human resources department and the Equal Employment Opportunity Commission. Can you imagine a better way to silence a victim of sexual harassment than to threaten her with a lawsuit for simply making a complaint to human resources?

Employers who want to do the right thing are put in a terrible position. They have knowledge of the harassing activity and yet their hands are tied. If they tell a potential employer that the employee was accused of harassing conduct, they may be on the hook for a defamation claim. If they stay silent, the harasser is then free to victimize more individuals at his or her new job without anyone ever having known about the alleged behavior.

To be sure, none of these frivolous lawsuits has so far survived the trial or appellate courts, but the prospect that either a harassment victim or diligent employer would be dragged to court for exercising their rights and following the law is nothing short of absurd.

## Legislation to Help

The California Chamber of Commerce and numerous other employer organizations are supporting legislation to remedy this outrage.

Assembly Bill 2770 by Assemblywoman Jacqui Irwin would address this situation by protecting an employer's ability to notify future employers about sexual harassment investigations without fear of defamation lawsuits. The measure will provide greater transparency during job reference checks regarding sexual harassment complaints and investigations.

The measure also protects employees from defamation lawsuits for reporting sexual harassment allegations to their employers or official agencies.

Employers agree with Kevin Kish, state Department of Fair Employment and Housing director, who said, "Sexual harassment and assault can happen in any workplace, in any industry. Employers must be prepared to immediately investigate allegations of sexual misconduct and take prompt action to protect employees subjected to it and prevent future violations."

But employers should not be dissuaded from taking the extra and important step to warn future employers of the behavior of former employees who engaged in the same sexual misconduct.

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*Nancy Lindholm is president and CEO of the Oxnard Chamber of Commerce. Jennifer Barrera is senior vice president for policy for the California Chamber of Commerce.*

## CalChamber-Sponsored Seminars/Trade Shows

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Business Mission to Israel. U.S. Chamber. May 8–10, Israel. (202) 463-3584.  
21st Annual International Business Luncheon. World Trade Center Northern California. May 24, Sacra-

mento. (916) 319-4272.  
SelectUSA Investment Summit. U.S. Department of Commerce. June 20–22, Oxon Hill, MD. (800) 424-5249.  
Vehicle Aftermarket Trade Mission to Chile. Auto Care Association and

International Trade Administration.  
August 21–22, Chile. (301) 654-6664.  
83rd Thessaloniki International Fair. HELEXPO. September 8–16, Thessaloniki, Greece.

## Assembly Judiciary Passes CalChamber-Opposed Bills

*From Page 1*

that arbitration just "...changes the forum in which you resolve those disputes."

### **Less Costly Forum**

In fact, Barrera argued that arbitration is a less formal, less costly, and a less time-consuming forum to resolve a dispute.

"In California it's not a secret forum," Barrera said.

AB 2656 (Corbett; D-San Leandro), passed in 2002, requires all arbitration companies to report on a quarterly basis, a spreadsheet and a database that has every arbitration they conduct here in California. The database is searchable, has the parties' names, the allegations, the attorney involved, how many times they've been before that arbitrator, the damages that are awarded, and how the dispute is resolved.

"That's more data than you're going to get out of a court of law because you would have to have a comprehensive report from all of the county courts in our state...and that's not available right now," Barrera said.

### **Uniform Way to Resolve Disputes**

She emphasized that employers use arbitration, "not because they think they're going to get some advantage against the employees in arbitration, not because they think they're going to reduce the awards to the employees in arbitration—they utilize arbitration as a uniform way in which to resolve disputes to avoid litigation costs and attorney's fees."

Employers would rather have the dispute resolved within a year, then go and litigate it for five to seven years in the civil courts and then have to pay, not only their defense costs and attorney's fees, but the attorney's fees of the plaintiffs as well, Barrera said.

"As long as we have the underlying issue with regards to the litigation environment in California, where employers can be sued for technical violations on a pay stub that don't result in any wage loss, you will see companies utilize arbitration as a way to avoid the attorney's fees that can basically bankrupt them and put them out of business," she said.

Barrera also recapped reasons that AB 3080 is preempted by the Federal Arbitration Act (FAA). The act is broad and mandates the enforcement of any written arbitration agreement regarding the resolution of any dispute arising out of a transaction involving commerce. The only exception is if the contract is unenforceable due to contractual defenses that exist and are applicable to any contract.

She cited several cases from state and federal Supreme Courts, saying the law is clear, "that you cannot discriminate against arbitration when you're forming a contract," and that's what AB 3080 does.



CalChamber Policy Advocate Laura Curtis summarizes for the Assembly Judiciary Committee how CalChamber-opposed AB 3081 (Gonzalez Fletcher; D-San Diego) expands ways to sue employers for sexual harassment claims. See video at [calchamberalert.com](http://calchamberalert.com).

### **Preempted by Federal Law**

AB 3080 is not applicable to all contracts and is not a general contractual defense. It unfairly targets and discriminates against arbitration clauses in employment contracts, leaving all other terms of employment conditional and mandatory. Accordingly, it is preempted under the FAA.

Just a couple of weeks ago, the California court of appeal said legislation enacted in 2014 and similar to AB 3080, but affecting consumer contracts—AB 2617 (Weber; D-San Diego, Chapter 910)—was preempted by the FAA.

Pointing out that the bill language in AB 3080 is very similar to AB 2617, Barrera concluded, that the language "has been repeatedly struck down as preempted under the Federal Arbitration Act and we believe this bill will as well."

### **More Confusion/Liability**



## OPPOSE

CalChamber Policy Advocate Laura Curtis recapped for the committee why the CalChamber opposes **AB 3081 (Gonzalez Fletcher; D-San Diego)**: because

it imposes additional and conflicting mandates on employers with regards to sexual harassment, creating another pathway for costly litigation against employers for issues that are already protected under the Fair Employment and Housing Act (FEHA).

Curtis explained that "employees are already protected against sexual harassment, discrimination and retaliation under FEHA." AB 3081 seeks to take the protections offered by FEHA and place them in the Labor Code.

In vetoing AB 569 (Gonzalez Fletcher; D-San Diego) just last year, Governor Edmund G. Brown Jr. wrote: "I believe these types of claims should remain in the jurisdiction of the Department of Fair

Employment and Housing."

FEHA and the Department of Fair Employment and Housing have very strict regulations and guidelines regarding training, notice, retaliation and most of the issues covered in AB 3081.

Curtis explained to the committee members that FEHA is so specific that it even regulates the font size in which notices must be published.

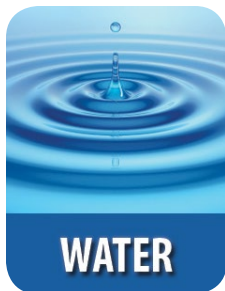
### **Expanded Employer Liability**

AB 3081 unnecessarily expands employer liability, Curtis said.

FEHA already allows victims who prevail in a sexual harassment suit to obtain compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees. If sexual harassment protection is added to the Labor Code, employers are not only exposed to

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# Water Storage Project Funding Requests Fare Better in Second Round of Reviews



The California Water Commission is moving closer to approving requests for funding from Proposition 1, the 2014 ballot measure authorizing \$2.7 billion for investments in

new water storage projects.

At public meetings this week, the Commission staff focused on technical aspects of the project applications as a prelude to the Commission's consideration of the funding requests next week.

In contrast to the first round of the project applications, the Commission staff is recommending that 8 of the 10 projects which appealed the no-funding recommendation in round one receive enhanced funding—a total of \$2.587 billion.

Project applications cite the flexibility that the storage projects will offer water managers, helping them save water in wet times for use in dry ones for the benefit of people, farmers and other businesses, and the environment.

## Water Storage

Among the projects recommended for funding are four surface storage projects and one groundwater storage project:

- **Sites Project**, located in Northern California west of the community of

Maxwell in Colusa County, \$933.3 million recommended.

Sites is an offstream reservoir that would be filled only during major storms. Water captured in the reservoir would be available during dry years and extended droughts to provide coldwater releases to support salmon, and to be delivered through the Yolo Bypass to support Delta smelt.

- **Pacheco Reservoir Expansion Project**, located southeast of San Jose and north of Highway 152, \$484.5 million recommended.

The project on the north fork of Pacheco Creek will increase the reservoir's capacity vastly (by a factor of about 25). Project supporters say it will provide enough water to supply 1.4 million residents for a year.

- **Los Vaqueros Reservoir Expansion Project**, located in southeastern Contra Costa County, \$422.6 million recommended.

The expanded reservoir capacity (about 115,000 acre-feet), say project supporters, will support better management of water for environmental uses as well as increased water supply reliability for the Bay Area.

- **Temperance Flat Reservoir Project**, located on the San Joaquin River upstream from Millerton Lake, northeast of Fresno, \$171.3 million recommended.

The new reservoir would have a storage capacity of 1.26 million acre-feet. Benefits cited by supporters include improved water quality and reliability,

increased flows for native fish, and flood protection in wet years.

- **Kern Fan Groundwater Storage Project**, located about 6 miles west of Bakersfield in Kern County, \$72.5 million recommended.

The Kern Fan project is a water banking project to recharge and store up to 100,000 acre-feet of water, mainly during wet periods, in the Kern County Groundwater sub-basin of the San Joaquin Valley Groundwater Basin.

## CalChamber Support

The California Chamber of Commerce supported the water bond based on the \$2.7 billion water storage components. Storage is needed to control the amount and timing of water flowing through the Delta to meet endangered species requirements, which affects the amount of contracted water available for farmers and cities downstream.

Storage capacity also provides the opportunity to store more water in wet years to offset needs in drier years. Groundwater and surface water projects qualify for funding.

For a recap on how letters and media influenced the Commission to re-open the project application process, see the CalChamber *Capitol Insider* [blog entry](#).

More information on the water storage projects, applications, hearings and more is available at the Commission website, [www.cwc.ca.gov](http://www.cwc.ca.gov).

**Staff Contact: Valerie Nera**

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## Assembly Labor Committee Nixes Flexible Workweek Bill



A California Chamber of Commerce-supported job creator bill allowing an

employee-selected flexible work schedule failed to pass the Assembly Labor and Employment Committee this week.

**AB 2482 (Voepel; R-Santee)** sought to provide employees the ability to request an alternative workweek schedule on an individualized basis.

The bill relieves employers of the administrative cost and burden of adopting an alternative workweek schedule per division, which accommodates employees, helps retain employees, and allows the employer to invest these savings into growing its workforce.

In testimony to the committee, CalChamber Policy Advocate Laura Curtis pointed out that California is one of only three states that requires employers to pay

daily overtime after 8 hours of work and weekly overtime after 40 hours of work.

Even the other two states that impose daily overtime requirements allow the employer and employee to waive the daily 8-hour overtime requirement through a written agreement.

California, however, provides no such common-sense alternative. Rather, California requires employers to navigate through a multi-step process to have employees elect an alternative workweek schedule that, once adopted, must be “regularly” scheduled.

The process is filled with potential traps that could lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid and leave the employer on the hook for claims of unpaid overtime wages.

Curtis emphasized that only 2.3% of California employers are using the alternative workweek schedule option.

Under current law, an individual can’t

have an alternative workweek schedule unless they are the only person in their work unit, she noted.

As opponents have said, she observed, “The workforce is changing, but the workplace is not.” AB 2482 provides a step toward change that will add flexibility for employees and employers.

The bill leaves in place the numerous protections California law provides employees.

### Key Vote

Assembly Labor and Employment rejected AB 2482 on April 25, 2-5:

**Ayes: Flora (R-Ripon), Melendez (R-Lake Elsinore).**

**Noes: Thurmond (D-Richmond), Jones-Sawyer (D-South Los Angeles), Gonzalez Fletcher (D-San Diego), Kalra (D-San Jose), McCarty (D-Sacramento).**  
**Staff Contact: Laura Curtis**

## CalChamber-Backed Regulatory Reform Bills Pass Assembly Committee

From Page 1

### Modernizing Agencies

The CalChamber and coalition of business organizations supporting **AB 2087** know that smart investment and the adoption of new technology enhances California’s ability to deliver services and improves stakeholders’ ability to participate meaningfully.

Failing to modernize results in state agencies operating or supporting systems that are duplicative, inefficient, not well-integrated, costly to maintain, and vulnerable to cyber-attack.

### Streamlining Operations

California has long recognized the benefit of analyzing the impact of a regulation before it is enacted. However, even the best analyses are conducted before knowing what a regulation will do. A healthy regulatory system must track with reality and revise, simplify, strengthen, expand, or eliminate regulations based on what they do in practice.

**AB 2971** requires state agencies to review their existing regulations, identify any that are inconsistent, duplicative,

overlapping, or outdated, and submit a report to the Legislature and Governor by January 1, 2021. The bill also provides agencies with the flexibility to review their regulations in a manner that is neither cost prohibitive nor overly burdensome.

**AB 2971** does not specify how an agency may choose to conduct a review. The bill does not require that agencies take any action to immediately repeal or revise any existing rule. They must simply identify, report, and plan.

### Legislative Oversight

**AB 2671** increases legislative oversight of agency rulemaking. The bill would allow the Legislature to review major regulations before they are enacted, affording them the opportunity to pass a statute to address the problem instead. This ensures that the agency has exercised its delegated authority properly before a rule takes effect.

**AB 2671** also requires that state agencies review and revise existing regulations to address inconsistent, duplicative, overlapping, and outdated provisions. A healthy regulatory system combines both prospective analysis and

retrospective review to promote the maintenance, strengthening, or expansion of rules that work well and the streamlining or revision of those that have proven ineffective or unnecessary.

### Key Votes

• **AB 2087** passed Assembly Accountability and Administrative Review on April 25, 7-0:

**Ayes: Eggman (D-Stockton), Patterson (R-Fresno), Burke (D-Inglewood), Frazier (D-Discovery Bay), Lackey (R-Palmdale), Medina (D-Riverside), Quirk-Silva (D-Fullerton).**

• **AB 2971** passed, 6-0:

**Ayes: Eggman (D-Stockton), Patterson (R-Fresno), Burke (D-Inglewood), Frazier (D-Discovery Bay), Lackey (R-Palmdale), Quirk-Silva (D-Fullerton).**

No vote recorded: Medina (D-Riverside).

• **AB 2671** passed, 4-3:

**Ayes: Patterson (R-Fresno), Burke (D-Inglewood), Lackey (R-Palmdale), Quirk-Silva (D-Fullerton).**

**Noes: Eggman (D-Stockton), Frazier (D-Discovery Bay), Medina (D-Riverside).**

**Staff Contact: Marti Fisher**

## Assembly Committee Rejects Effort to Offer Employers Lawsuit Relief



Two bills named as job creators by the California Chamber of Commerce

were rejected by an Assembly committee last week. Both bills would have protected businesses from frivolous litigation, thus allowing employers to invest financial resources saved back into the economy, local communities and providing jobs.

• **AB 2016 (Fong; R-Bakersfield)** mitigates the financial threat of frivolous litigation by requiring that plaintiffs provide a more detailed account of the allegations in the required Labor Code Private Attorneys General Act (PAGA) notice. It also offers employers a reasonable opportunity to cure alleged violations before being subject to costly, frivolous lawsuits.

• **AB 2907 (Flora; R-Ripon)** provides employers with a reasonable opportunity to cure specific Labor Code violations before being subject to costly and frivolous litigation under the PAGA.

### Costly Lawsuits/Penalties

California has some of the most onerous and complex labor laws in the country. This complexity is exemplified by PAGA, which essentially allows an individual to pursue a “representative action” on behalf of similarly aggrieved employees without being subject to the strict filing requirements of a class action lawsuit.

PAGA requires a \$100 penalty per employee, per pay period for the first violation, and \$200 per employee, per pay period for each subsequent violation. If there are multiple Labor Code violations, then these penalties are stacked.

In addition, if the employee recovers any dollar amount, the employee is entitled to attorney’s fees, which adds another layer of cost onto the employer.

One unintentional and minor violation of the Labor Code can result in the threat of financially devastating civil litigation against an employer, the CalChamber pointed out in its letters supporting the PAGA bills.

### High Volume of Threats

The Labor and Workforce Development Agency reports receiving more than 6,000 PAGA notices a year, as noted in the Governor’s 2016–2017 Budget.

Although not all those notices result in a civil complaint being filed, a significant portion are leveraged for quick settlements from employers with the threat of costly litigation and/or actual civil litigation if a settlement is not reached.

### Detailed Information

Current law simply requires the employee to state in a PAGA notice the Labor Code provision allegedly violated.

AB 2016 requires the plaintiff to provide a statement setting forth the relevant facts, legal contentions, and authorities supporting each alleged viola-

tion. In addition, the bill requires the plaintiff to provide an estimate of the number of current and former employees who were affected by the alleged violations and on whose behalf relief is sought.

If the plaintiff seeks relief on behalf of 10 or more employees, AB 2016 requires that the notice be verified.

### Employer/Employee Benefits

Providing the employer with a longer opportunity to cure alleged grievances, as proposed by both AB 2016 and AB 2907, is beneficial to both employer and employee. Current law provides just 33 days.

For the employer, the opportunity to cure alleged grievances eliminates the threat of costly civil litigation for an unintentional error of which the employer was unaware. For the employee, that chance to cure provides an efficient remedy to an alleged violation.

### Key Votes

The Assembly Labor and Employment Committee rejected both AB 2016 and AB 2907 on April 18 on votes of 2-5:

**Ayes: Flora (R-Ripon), Mathis (R-Visalia).**

**Noes:** Gonzales Fletcher (D-San Diego), Jones-Sawyer (D-South Los Angeles), Kalra (D-San Jose), McCarty (D-Sacramento), Thurmond (D-Richmond).

AB 2016 was granted reconsideration.  
**Staff Contact: Laura Curtis**

## Assembly Judiciary Passes CalChamber-Opposed Bills

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FEHA remedies, but also lawsuits under the Private Attorneys General Act (PAGA), Curtis said.

AB 3081 also creates an unfair rebuttable presumption for employers. CalChamber’s analysis of AB 3081 finds that the bill presumes an employer retaliated against an employee if the employer takes any corrective action within 90 days of an employee’s complaint or opposition to an employer’s practice or policy regarding sexual harassment.

### Joint Liability Already Exists

In closing, Curtis discussed the joint employer liability created in AB 3081. There is no reason a contractor should, or would be able to, ensure that the com-

pany it hires to provide services is following the FEHA. That liability should fall on the company that hires these employees and has these employees as its workers, Curtis argued.

Moreover, employers who expend a significant amount of control over other employees already have joint employer liability, under current law.

### Key Votes

• **AB 3080** passed the Assembly Judiciary Committee 7-3:

**Ayes:** Chau (D-Monterey Park), Chiu (D-San Francisco), Holden (D-Pasadena), Kalra (D-San Jose), Reyes (D-Grand Terrace), M. Stone (D-Scotts Valley), Weber (D-San Diego).

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

• **AB 3081** passed, 8-2:

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

**Noes: Cunningham (R-Templeton), Kiley (R-Granite Bay).**

Both bills now move to the Assembly Appropriations Committee; no hearing date set.

**Staff Contacts: Jennifer Barrera, Laura Curtis**

LIVE WEBINAR | THURSDAY, MAY 17, 2018 | 10:00 - 11:30 AM PT

## Bundle of Labor Laws: PDL, California's New Parental Leave, and Baby Bonding Under FMLA and CFRA

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