

# ALERT

## CalChamber-Sponsored Bill Advances in Assembly

*Protects Victims/Employers from Serial Harassers*



A California Chamber of Commerce-sponsored job creator bill that codifies case

law to ensure victims of sexual harassment and employers are not sued for defamation won unanimous bipartisan approval from an Assembly committee this week.

**AB 2770 (Irwin; D-Thousand Oaks)** protects an employer's ability to warn potential employers about an individual's harassing conduct without the threat of a defamation lawsuit when responding to a reference check.

The bill also protects employees from

defamation lawsuits for reporting sexual harassment allegations to employers or official agencies.

Alleged harassers are not only suing victims, but also filing suit against employers for defamation. Such lawsuits put employers in an impossible position as they have an affirmative duty to take reasonable steps to prevent and promptly correct harassment.

Worse, if the alleged harasser's employment is then terminated, or the alleged harasser resigns, employers are put in an even more difficult position. The company has knowledge of the harassing activity and yet its hands are tied.

If the company tells a potential

*See CalChamber-Sponsored Bill: Page 4*

## CalChamber Stops 4 Job Killers, Gets Changes to Remove Tag from Another



Four California Chamber of Commerce-opposed job killer bills are likely dead for the session, having failed to advance to the Assembly Appropriations

Committee for a vote. In addition, a fifth bill was amended recently to remove the job killer tag.

April 27 was the deadline for all policy committees to hear and report any relevant legislation to the Assembly and Senate Appropriations committees.

### Missed Deadline

• **AB 1745 (Ting; D-San Francisco) Vehicle Ban:** Would have banned the sale of combustion engine vehicles in the state by prohibiting the registration of a new vehicle in the state after 2040 unless it was a zero-emission vehicle. *Failed deadline. Assembly Transportation Committee, 04/27/18.*

• **AB 2527 (Muratsuchi; D-Torrance) Costly Litigation Against Small Employers:** Would have exposed small businesses who were seeking financial investors in their company to devastating class action litigation by banning the use of arbitration agreements, which is preempted by the Federal Arbitration Act, prohibiting class action waivers, allowing for the award of treble damages, punitive damages, and

*See CalChamber Stops: Page 4*



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### Inside

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## Labor Law Corner

# How to Analyze Time Off Options for Employee at Small Company



**Sunny Lee**  
HR Adviser

*We are a small company of 29 employees. Do we have to provide time off work for an employee to care for her daughter?*

The New Parent Leave Act (NPLA) is the California law that went into effect on January 1 of this year and it requires a company of 20 or more employees to provide up to 12 weeks of unpaid time off within one year of a child's birth,

adoption or foster care placement. This leave is for baby bonding only.

### Parental Leave Criteria

Even though the employee has not asked for parental leave, it is important for you to consider that she may be eligible for that time if her daughter is less than 1 year old and the employee has worked for you for one year and 1,250 hours during the prior 12 months, but only for purposes of baby bonding.

However, if the employee has any available paid sick leave or paid time off, the employee may choose to use such time to care for her ill daughter, regardless of the daughter's age.

The federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA)—for employers with 50 or more workers—both contain provisions that require a leave to care for

a parent, child, spouse, or domestic partner. However, the new parental leave applicable to smaller employers did not adopt those provisions.

### Look at Past Practice

Absent a mandated leave, California law requires that you provide available paid sick leave. Beyond that, you should look to see what you have done in the past for unpaid time off work either by company policy or past practice, meaning what you have done for other employees in similar situations.

*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. 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

TECHSPO LA 2018. TECHSPO. June 13-14, Santa Monica. (800) 805-5385.

### International Trade

Water and Agriculture Technology Business Mission to Israel. U.S. Chamber. May 8-10, Israel. (202) 463-3584.

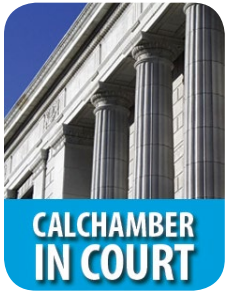
21st Annual International Business Luncheon. World Trade Center Northern California. May 24, Sacramento. (916) 319-4272.  
SelectUSA Investment Summit. U.S. Department of Commerce. June 20-22, Oxon Hill, MD. (800) 424-5249.  
Vehicle Aftermarket Trade Mission to Chile. Auto Care Association and International Trade Administration. August 21-22, Chile. (301) 654-6664.  
83rd Thessaloniki International Fair. HELEXPO. September 8-16, Thessaloniki, Greece.  
China International Import Expo. China International Import Export Bureau. November 5-10, Shanghai, China.

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# California Supreme Court Adopts New Test for Deciding Independent Contractor Status



The California Supreme Court has issued its **much-anticipated decision** on which test should be applied when determining whether an individual is an employee or an

independent contractor (*Dynamex Operations West, Inc. v. Superior Court*, No. S222732 (April 30, 2018)).

The case involved delivery drivers who sued a nationwide package and delivery company alleging they were misclassified as independent contractors and were unlawfully denied overtime among other wage-and-hour violations.

## Court Ruling

The Court ruled in favor of the drivers, and, in doing so, has abandoned the long-standing “Borello test” (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341) and adopted a new independent contractor test.

To distinguish between an employee and an independent contractor, the Court concluded that individuals are presumed to be employees, and a company classifying an individual as an independent contractor bears the burden of justifying

that individual’s independent contractor classification under the “ABC test.”

The ABC test replaces the previously utilized “right to control” or “common law” test, which focused on the hiring entity’s ability to control how the work was performed.

## More Restrictive Test

Under the more restrictive ABC test, an individual is presumed to be an employee, unless the company can prove all of the following:

- That the worker is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and
- That the worker performs work that is outside the usual course of the hiring entity’s business; and
- That the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

If the hiring entity fails to show that the individual worker satisfies each of the three criteria, the worker is treated as an employee, not an independent contractor.

The Court’s ruling will apply to disputes involving alleged violations of California’s Wage Orders adopted by California’s Industrial Welfare Commission (IWC). Following this decision, California employers will want to re-

evaluate workers currently treated as independent contractors under the new ABC test to determine whether reclassification may be necessary.

## CalChamber in Court

The California Chamber of Commerce filed both a **letter brief** urging the Court to decide what independent contractor test should be used, as well as a **friend-of-the-court brief** supporting Dynamex and the common law test under *Borello*.

The CalChamber legal affairs unit files friend-of-the-court briefs on behalf of CalChamber members and key industries to emphasize the impact that judicial decisions would have on California’s economy.

**Staff Contact: Bianca Saad**

## 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

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## Flexible Scheduling Job Creator Bill Misses Deadline



A California Chamber of Commerce-sponsored job creator bill to improve

employee flexibility has missed the deadline to move from the Assembly policy committee to the fiscal committee.

**AB 2509 (Waldron; R-Escondido)**

sought to provide non-exempt employees, who work a traditional 8-hour day schedule, the opportunity to request an on-duty meal period in order to leave work 30

minutes earlier, which helps accommodate employee requests, retain employees, and offer more flexible work arrangements.

The bill never was heard in the Assembly Labor and Employment Committee.

The bill would have provided employees the same protections offered by the make-up time provision of the Labor Code—the on-duty meal period request must be employee initiated, in writing, and not encouraged or requested by the employer.

Employees are constantly requesting more flexibility at work in order to care for family, accommodate class schedules, or avoid traffic, etc., but employers' hands are tied because of strict labor laws.

AB 2509 would simply have allowed employees a little more leniency in their already-hectic schedules while protecting employers who want to provide this type of flexibility.

**Staff Contact: Laura Curtis**

## CalChamber-Sponsored Bill Advances in Assembly

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employer that the employee was accused of harassing conduct, the company is on the hook for a defamation claim. If the company stays silent, the harassers are then free to victimize more individuals at their next job without anyone at the new company ever knowing about the unacceptable behavior.

By addressing this situation, AB 2770

will reduce frivolous lawsuits and allow an employer to use the financial resources that would have been diverted to litigation to grow its workforce instead.

### Key Vote

AB 2770 passed the Assembly Judiciary Committee on May 1, 10-0:

**Ayes: Chau (D-Monterey Park), Chiu (D-San Francisco), Cunningham**

**(R-Templeton), Gonzalez Fletcher (D-San Diego), Holden (D-Pasadena), Kalra (D-San Jose), Kiley (R-Granite Bay), Maienschein (R-San Diego), Reyes (D-Grand Terrace), M. Stone (D-Scotts Valley).**

The bill will be considered next by the entire Assembly.

**Staff Contact: Laura Curtis**

## CalChamber Stops 4 Job Killers, Gets Changes to Remove Tag from Another

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attorney's fees, and interfered with contractual negotiations between sophisticated parties by dictating the choice of forum and choice of law for such litigation. *Failed deadline. Assembly Business and Finance Committee, 04/27/18.*

• **AB 2571 (Gonzalez Fletcher; D-San Diego) Public Employee Retirement Systems Investment Policy:**

Sought to publicly shame investment managers and the hospitality companies in which they invest, by forcing them to submit an annual report subject to a public review, that disclosed employee wage information according to gender, ethnicity, and race, exposing such companies to costly litigation. *Failed deadline. Assembly Public Employees, Retirement, and Social Security Committee, 04/27/18.*

• **AB 2765 (Low; D-Campbell) Portable Benefits for The Gig Economy:** Would have imposed onerous and

costly mandates on companies in the gig economy labeled as the "digital marketplace" by adding them under the provisions of the Fair Employment and Housing Act (FEHA), expanding the protected classifications under FEHA for contractors of the digital marketplace to include "familial status," and created further confusion and uncertainty regarding the use and classification of independent contractors. These new mandates would have dramatically increased the amount of frivolous litigation under FEHA and the Private Attorneys General Act (PAGA) for the digital marketplace. *Failed deadline. Assembly Labor and Employment Committee, 04/27/18.*

### Job Killer Tag Removed

As a result of April 26 amendments, CalChamber has removed **AB 2447 (Reyes; D-Grand Terrace)** from the job killer list, but remains opposed.

Before the amendments, the bill

would have invited more litigation and increased the complexity and cost of complying with the California Environmental Quality Act (CEQA) by forcing lead agencies to make a no discrimination finding before certifying an environmental impact report or adopting a negative declaration for a project.

CalChamber remains opposed to AB 2447 because the bill fundamentally changes how CEQA has operated for more than four decades with substantial fiscal and practical impacts.

### Next Deadline

The next significant deadline for job killing legislation is May 11, which is the last day for policy committees to hear and report nonfiscal legislation to the floor for consideration by the entire Assembly or Senate.

For more information on the remaining job killers, visit [www.CAJobKillers.com](http://www.CAJobKillers.com) or follow @CAJobKillers on Twitter.

## Overview of June Ballot Measures

Following are brief summaries of the five measures that will appear on the June 5 primary election ballot. The reasons for the California Chamber of Commerce positions are summarized.

The CalChamber encourages employers to share this information with their employees. Businesses are within their rights to do so—just remember: NO

PAYCHECK STUFFERS, no coercion, no rewarding or punishing employees (or threatening to do so) for their political activities or beliefs.

For more guidelines on political communications to employees, see the brochure at [www.calchamber.com/guidelines](http://www.calchamber.com/guidelines). Note the distinction between *internal* communications (to employees,

stockholders, and their families) and communications to *external* audiences (such as nonstockholder retirees, outside vendors, customers and passersby).

For more information on the ballot measures, see the links listed below or visit the website of the Secretary of State at [www.sos.ca.gov](http://www.sos.ca.gov).

### Proposition 68



**Authorizes Bonds Funding Parks, Natural Resources Protection, Climate Adaptation, Water Quality and Supply, and Flood Protection.**

Authorizes \$4 billion in general obligation bonds for: parks, natural resources protection, climate adaptation, water quality and supply, and flood protection.

**Placed on Ballot by:** Legislature.

**CalChamber Position:** Support

#### Reasons for Position

The CalChamber Board voted to support the measure because it will provide funds for: groundwater cleanups that improve water quality; flood protection and repair; clean drinking water projects; and parks in urban and disadvantaged communities.

**More Information:** [www.yes68ca.com](http://www.yes68ca.com)

### Proposition 69



**Requires that Certain New Transportation Revenues Be Used for Transportation Purposes. Legislative Constitutional Amendment.**

Requires that certain revenues generated by a 2017 transportation funding law be used only for transportation purposes and generally prohibits Legislature from diverting funds to other purposes.

**Placed on Ballot by:** Legislature.

**CalChamber Position:** Support

#### Reasons for Position

The CalChamber Board voted to endorse this measure to add protections for the new transportation revenues approved under CalChamber-supported SB 1 (Beall; D-San Jose; Chapter 5, Statutes of 2017), which enacted the Road Repair and Accountability Act of 2017.

**More Information:** [YesProp69.com](http://YesProp69.com)

### Proposition 70



**Requires Legislative Supermajority Vote Approving Use of Cap-and-Trade Reserve Fund. Legislative Constitutional Amendment.**

Beginning in 2024, requires that cap-and-trade revenues accumulate in a reserve fund until the Legislature, by a two-thirds majority, authorizes use of the revenues.

**Placed on Ballot by:** Legislature.

**CalChamber Position:** Support

#### Reasons for Position

The CalChamber Board voted to support this measure because it will encourage bipartisan support for a cap-and-trade expenditure plan and allow for a process to negotiate expenditures that furthers the goals of the Legislature as a whole.

**More Information:** [www.calchamber.com/ballot](http://www.calchamber.com/ballot)

### Proposition 71

**Sets Effective Date for Ballot Measures. Legislative Constitutional Amendment.**

Provides that ballot measures approved by a majority of voters shall take effect five days after the Secretary of State certifies the results of the election.

**Placed on Ballot by:** Legislature.

**CalChamber Position:** Support

**Reasons for Position**

The CalChamber Board voted to support the measure because allowing initiatives and referenda to go into effect before the vote has been certified by the Secretary of State can create confusion and even the erroneous implementation of new law.

**More Information:**

[kevin.mullin@asm.ca.gov](mailto:kevin.mullin@asm.ca.gov)

### Proposition 72

**Permits Legislature to Exclude Newly Constructed Rain-Capture Systems from Property-Tax Reassessment Requirement. Legislative Constitutional Amendment.**

Permits Legislature to allow construction of rain-capture systems, completed on or after January 1, 2019, without requiring property-tax reassessment.

**Placed on Ballot by:** Legislature.

**CalChamber Position:** Support

**Reasons for Position**

The CalChamber Board voted to support Proposition 72 because rain water recapture systems are an effective means of conserving water that should be encouraged.

**More Information:** [SaveCaWater.org](http://SaveCaWater.org)

## Voting Season Begins May 7; Key Dates to Remember

Voting for California's primary election will begin on May 7, the first day to vote by mail.

Five counties in Northern California will be conducting elections under a new model where voters can choose how, when and where they cast their ballot. The participating counties—Madera, Napa, Nevada Sacramento and San Mateo—will be mailing every voter a ballot, expanding in-person early voting, and allowing voters to cast a ballot at *any* vote center within their county.

The changes are a result of the California Voter's Choice Act, passed in 2016 to modernize elections in the state.

**Election Resources**

For information on how to register to vote or how to vote, contact the office of the Secretary of State at 1-800-345-VOTE (8683) or visit [www.sos.ca.gov](http://www.sos.ca.gov).

The website includes links to check voter status, register to vote online and the official voter information pamphlet.

Election information also is available

on the California Chamber of Commerce grassroots website at [www.calchambervotes.com](http://www.calchambervotes.com).

**Dates to Remember**

- May 7: First day to vote by mail.
- May 21: Last day to register to vote.
- May 29: Last day to apply for a vote-by-mail ballot by mail.
- June 5: Election Day. Polls are open 7 a.m. to 8 p.m.

Tools to stay in touch with your legislators.

**[calchambervotes.com](http://calchambervotes.com)**

# California-Mexico Partnership Luncheon Features Innovations in Energy, Education



Energy projects that are helping foster innovations in California and Mexico were highlighted this week at an international luncheon forum co-hosted by the California Chamber of Commerce and the Consulate General of México of Sacramento for nearly 100 guests.

The May 1 luncheon was part of the Ninth Annual California Mexico Advocacy Day, which works to increase the relevance of Mexico's relationship with the United States and the State of California.

Serving as moderator for the session was Dr. Hermann Tribukait, representative of Sener-Conacyt Funds for Energy Innovation in North America.

The featured panelists were:

- Dr. Michael Siminovitch, director, California Lighting Technology Center at the University of California, Davis;
- Dr. Mauricio Alcocer Ruthling, director of the Center for Sustainability and Renewable Energy at the Universidad Autónoma de Guadalajara; and
- Dr. Luis Serra, executive director, Energy Initiative Tecnológico de Monterrey.

## UC Davis Lighting Center

Siminovitch gave an **overview of the lighting center's efforts** to support collaboration among representatives from private industry, public agencies and utilities.

The center began with the idea that the commercial sector needed to be involved from Day 1 for the center to succeed in translating research results into practical results, Siminovitch said.

One beneficiary of the center's research, he noted, is the UC Davis campus, which is in the process of changing every single lighting system. Ultimately, the changes will yield 70% savings on the cost of exterior lighting, he said.

## Guadalajara Center

Alcocer said the **Center for Sustainability and Renewable Energy** at the Universidad Autónoma de Guadalajara hopes to help people prepare to work in the lighting field and to be a part of developing standards for Mexico.

The center has a four-year timetable for its activities, which also will include applied research in lighting, technology transfer and creating collaborative relationships with government and industry, he said.



At the CalChamber May 1 luncheon exploring California-Mexico partnerships in energy innovations are (from left) Dr. Luis Serra, CalChamber President/CEO Allan Zaremberg, Dr. Mauricio Alcocer Ruthling, Consul General Liliana Ferrer, Dr. Michael Siminovitch and Dr. Hermann Tribukait.

The impacts of the center's programs, Alcocer reported, will include reduced carbon emissions from use of energy-efficient lighting systems; scientific publications resulting from multidisciplinary research; healthier environments in workplaces, schools, health care institutions and homes due to optimal lighting; creation of energy-efficient prototypes for lighting systems; and reduced costs for lighting systems.

## Monterrey Energy Initiative

Serra quickly recapped the activities of the **Energy Initiative Tecnológico de Monterrey** in infrastructure, research, training and certification of lighting workers.

The training and certification programs have been very successful, he said, noting that the Monterrey initiative has created numerous massive open online courses (MOOCs).

The goal of the certification program, Serra said, was to get 450 workers certified for 10 labor skills. In actuality, the program was able to train more than 10 times that number—5,200 workers in two years.

One of the key components of the national lab, he explained, was deciding that the MOOCs would not be that specialized.

Now that the Mexico energy sector is open, he added, there will be an opportunity to look at integrating energy markets for all of North America.

## Closing Comments

Asked by Tribukait to summarize how to extend the knowledge gained to other areas, Siminovitch commented: "This is about culture change and cultural evolution." Once the "culture of collaboration" is created, that collaborative model developed through the lighting center projects can be applied to other building trades, he said.

Alcocer said the center in Guadalajara aims to create awareness among people about the relationship they have with energy, and the consequences of how they use lighting.

Referring to his earlier comment on the "whole ocean of opportunity" that has opened along with Mexico's energy market, Serra joked that his Twitter summary would be "hashtag we want it in Monterrey."

Consul General Liliana Ferrer pointed out that 20 California companies already are involved in renewable energy projects in Mexico.

For more information, including the speakers' slide presentations, see [www.calchamber.com/mexico](http://www.calchamber.com/mexico).

**Staff Contact: Susanne T. Stirling**



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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