CalChamber-Backed Bills Part of Budget Package

Governor Edmund G. Brown Jr. this week signed his final budget, a package that includes three California Chamber of Commerce-supported budget trailer bills which incorporated language from job creator bills.

- **AB 1808 (Committee on Budget)** extends and improves the Career Technical Education Incentive Grant program, which provides students with necessary training and education to prepare them for a variety of career options.
- **AB 1809 (Committee on Budget)** appropriates $10 million to create public-private partnerships to prepare students for high-skilled, high-demand jobs in technology, manufacturing, health care and finance.
- **SB 871 (Committee on Budget and Fiscal Review)** extends California’s tax incentive for motion pictures and television productions for an additional five years.

Career Technical Education

AB 1808 and AB 1809 contain similar provisions to CalChamber-supported and identified job creators, AB 1743 (O’Donnell; D-Long Beach) and SB 1243 (Portantino; D-La Cañada Flintridge), respectively.

The CalChamber supported the budget trailer bills because they include robust and ongoing funding for career technical education (CTE), and science, technology, engineering and mathematics (STEM) programs. Permanent support for CTE from the CTE Incentive Grants and from the Strong Workforce program will bring certainty to the many districts and communities working to facilitate long-term planning, hiring and design for these important programs.

Reconciling these updated and new programs to deliver their goals for schools and employers will take diligent cooperation and focus by the Legislature, administration, Department of Education, community colleges, local school districts, and employers.

The CalChamber stands ready to assist in the implementation challenges, in the ultimate interest of improving high school completion and proficiency, and employer talent recruitment needs.

Extension of Film Tax Credits

SB 871 included provisions from job creator bills AB 1734 (Calderon; See CalChamber-Backed: Page 4)

Tools to stay in touch with your legislators.

calchambervotes.com

Employment-Related Job Killers Move to Assembly Fiscal Committee

The Assembly Judiciary Committee this week sent to the fiscal committee two California Chamber of Commerce-opposed job killer bills dealing with employment-related matters. One bill deals with disclosing pay data and the other with the legal standard for filing certain harassment/discrimination claims.

Passed to the Assembly Appropriations Committee were:

- **SB 1284 (Jackson; D-Santa Barbara)** Unfairly requires California employers to submit pay data to the Department of Industrial Relations, potentially creating a false impression of wage discrimination or unequal pay where none exists and, therefore, subjecting employers to unfair public criticism, enforcement measures, and significant litigation costs to defend against meritless claims.

- **SB 1300 (Jackson; D-Santa Barbara)** Allows anyone to sue for failure to prevent harassment or discrimination even where no harassment or discrimination occurred. The bill significantly increases litigation by creating a new stand-alone private right of action allowing a plaintiff to sue for failure to prevent harassment or discrimination when no harassment or discrimination actually occurred, limits the use of severance agreements, and prohibits

Inside

- Another Mandate Conflict for Employers: Page 5
- See Employment-Related: Page 6
Do I have to allow my employee to attend her grandson’s high school graduation? We approved her request 2 months ago but now we are short-staffed and want to revoke that time off. Can we terminate her if she doesn’t come to work?

You may be required to allow your employee to attend the graduation if the School Activities Leave law applies.

The Family-School Partnership Act was enacted in California in 1995. It prohibits employers from discriminating against or terminating an employee for taking time off work to participate in school activities provided that the employee provides reasonable notice of the planned absence.

**School Activities Leave**

California Labor Code Section 230.8 requires employers of 25 or more employees working at the same location to allow time off work—up to 8 hours per month and 40 hours per year—for employees to participate in their child’s school activities from kindergarten through grade 12.

This law applies to a parent, guardian, stepparent, foster parent, grandparent of or person who stands in loco parentis to a child.

Although the grandmother is clearly approved and that it was for a school activity.

Certainly high school graduation is the culmination of the child’s successful participation in school activities. The school expects that family and friends will be attending by sending out invitations and by having reserved seating, and it is an activity that the school engages in every year.

**Potential Claim**

The employee satisfied the reasonable notice requirement by providing notice of the graduation 2 months in advance and got the time off approved. If the employee believes that he/she has been denied school activity leave, or was terminated for having used it, the employee may file a claim and may be entitled to reinstatement and reimbursement for lost pay and benefits.

In addition, if the employee is terminated, the employee may be able to allege that he/she was wrongfully terminated on the basis that the time off had been approved and that it was for a school activity.

Given that the employee may file a claim for being denied the time off or terminated, before an employer takes any adverse action against the employee, the employer should consult with an attorney.
NLRB Poised to Revisit Joint Employer Standard

As the saying goes, history often repeats itself as the National Labor Relations Board (NLRB) demonstrates. In May, NLRB Chairman John F. Ring announced that the Board will address, once again, the standard for determining joint employer status under the National Labor Relations Act (NLRA). However, this time the NLRB will use the rulemaking process.

In August 2015, the NLRB issued a decision in Browning-Ferris Industries of California that expansively broadened the definition of a “joint employer.” The decision expanded the type and number of entities that can be held responsible for unfair labor practice violations and created collective bargaining obligations to employees of a totally separate, independent employer.

Because Browning-Ferris was a Board decision, employers were denied any opportunity to object or otherwise voice concerns on the new standard’s impact and application.

A formal rulemaking process on a new joint employer standard will give employers a chance to voice any concerns during a public comment period.

“The current uncertainty over the standard to be applied in determining joint-employer status under the Act undermines employers’ willingness to create jobs and expand business opportunities,” said Chairman Ring, in a press release. “In my view, notice-and-comment rulemaking offers the best vehicle to fully consider all views on what the standard ought to be.”

The NLRB anticipates issuing a Notice of Proposed Rulemaking within the coming weeks. Employers with contingent workforces may wish to keep tabs on the proposed rules and participate in the rulemaking process. The California Chamber of Commerce HRWatchdog blog will continue to keep readers updated on any further developments.

CalChamber members can read more about Joint Employer Issues in the HR Library on HCAlifornia.com.

Cal/OSHA Reminder: Protect Outdoor Workers from Heat Illness

The California Division of Occupational Safety and Health (Cal/OSHA) is reminding employers to protect their outdoor workers from heat illness as temperatures reach triple digits in parts of California. Workers should be encouraged to take preventative cool-down breaks in the shade.

Outdoor workplaces include agriculture, construction, road work, landscaping, storage yards and other operations.

California’s heat illness prevention regulation requires employers with outdoor workers to:

- Develop and implement an effective written heat illness prevention plan that includes emergency response procedures.
  - Train all employees and supervisors on heat illness prevention.
  - Provide free, fresh, pure, suitably cool water so that each worker can drink at least one quart of water per hour. Encourage workers to do so.
  - Provide shade when workers request it and when temperatures exceed 80 degrees. Encourage workers to take a cool-down rest in the shade for at least five minutes. Workers should not wait until they feel sick to cool down.

Heat illness can develop into serious illness or death. Supervisors need to be effectively trained on emergency procedures in case a worker gets sick so the sick employee receives treatment immediately.

Cal/OSHA provides online information on heat illness prevention requirements and training materials at www.dir.ca.gov/DOSH/HeatIllnessInfo.html. The agency also offers a Heat Illness Prevention e-tool with real world examples of heat illness and best practices for an effective heat illness prevention plan.

California Chamber of Commerce members can use the Heat Illness Prevention Plan – Outdoor Employees on HCAlifornia.com to develop your company’s plan and procedures for complying with Cal/OSHA regulations on heat illness for outdoor workers. The form is also available in Spanish.

Staff Contact: Katie Culliton

Capitol Insider presented by CalChamber

The Capitol Insider blog presented by the California Chamber of Commerce offers readers a different perspective on issues under consideration in Sacramento. Sign up to receive notifications every time a new blog item is posted at capitolinsider.calchamber.com.
CalChamber-Backed Bills Part of Budget Package

**From Page 1**

D-Whittier) and SB 951 (Mitchell; D-Los Angeles), extending California’s tax incentive for motion pictures and television productions for an additional five years. This tax incentive has proven effective in maintaining jobs in California and growing jobs in this industry.

In 2014, the State Legislature enacted an expanded motion picture and television production tax credit program, which has proven to be a success in keeping more film and television productions—and the jobs these productions generate—here in California.

The current program has a sunset date of July 1, 2020. However, planning for both motion picture and television productions typically occurs several years in advance, and productions rely on the certainty that the incentive will be available, as location decisions are made.

**Fiscal Prudence**

The Governor’s final budget for 2018–19 continues to emphasize fiscal prudence, adding to the balance of the Rainy Day Fund approved by voters in 2014. The balance will be $13.8 billion, according to the Governor’s office.

If the current economic expansion continues to the end of the 2018–19 fiscal year, it will have matched the longest in post-World War II history.

**Education**

The final budget increases K–12 school funding by more than $4,600 per student compared to 2011–12 levels. The $78.4 billion in funding for K–14 schools marks a 66% increase in annual funding compared to seven years ago, according to the Governor’s office.

The state will fully implement the Local Control Funding Formula, an allocation that eliminates most categorical funding programs in favor of aiming supplemental funding toward poor students, English learners and children in foster care.

The budget will increase funding for California’s university and community college systems with no tuition or fee increases and establishes a new online community college.

Since 2012, the University of California has received $1.2 billion in new funding. Over the same period, new funding has amounted to $1.7 billion for the California State University system and $2.4 billion for the community colleges.

**Infrastructure**

The budget provides the first full year of funding under SB 1, the CalChamber-supported Road Repair and Accountability Act. New transportation funding for 2018–19 totals $4.6 billion to be used to fix neighborhood roads, state highways and bridges, fill potholes, ease congestion in busy trade and commute corridors, and improve/modernize passenger rail and public transit.

**Housing/Poverty**

The budget allocates $5 billion to help deal with affordable housing and homelessness. Local governments will receive $500 million to help their immediate efforts to assist homeless Californians.

The administration reports the state will provide billions to increase the state minimum wage; increase the Earned Income Tax Credit program; expand health care coverage to millions more Californians; restore low-income health benefits eliminated during the recession; boost CalWORKs grants; and increase child care and early education provider rates and the number of children served.

**Climate Change**

The budget includes a $1.4 billion cap-and-trade spending plan to invest in programs that continue the state’s efforts to reduce carbon emissions and support what the administration refers to as “climate resiliency efforts.”

The plan includes $210 million for forest improvement and fire prevention projects that protect California forests from wildfires and $334.5 million for the California Energy Commission and California Air Resources Board to begin implementing a multi-year effort to speed sales of zero-emission vehicles through vehicle rebates and infrastructure investments.

**More Information**

For the full text of the Budget Act and associated legislation, visit [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov). Additional details on the 2018–19 State Budget can be found at [www.ebudget.ca.gov](http://www.ebudget.ca.gov).

---

**CalChamber members:**

Are you using your discounts from FedEx®, UPS®, Lenovo® and others?

Participating members save an average of more than $500 a year. See what's available at calchamber.com/discounts or call Customer Service at (800) 331-8877.

Partner discounts available to CalChamber Online, Preferred and Executive members.
Senate Committees OK Conflicting Mandate, Pathway to Litigation for State Employers

A California Chamber of Commerce opposed bill creating another pathway of costly litigation against employers won approval by two Senate policy committees this week. AB 3081 (Gonzalez Fletcher; D-San Diego) passed the Senate Judiciary Committee on April 26 and the Senate Labor and Industrial Relations Committee the next day.

It imposes additional and conflicting mandates on employers regarding sexual harassment and other issues that already are protected under the Fair Employment and Housing Act (FEHA).

Confusion, Expanded Liability

Sexual harassment is defined as a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. The Department of Fair Employment and Housing (DFEH) is the regulatory agency that enforces FEHA and oversees workplace discrimination, harassment and retaliation issues.

AB 3081, however, places additional, often duplicative, sexual harassment protections and training requirements in the Labor Code. These provisions are completely misplaced, leaving the employer in the position of having to decipher and comply with two potentially conflicting statutes.

In addition, the Labor Commissioner and DFEH would have the authority to simultaneously promulgate separate and potentially conflicting regulations. This would lead to tremendous confusion for employers who are trying to comply with the law.

Single, Awkward Glance

Per AB 3081, an employee can claim job-protected leave for any allegation of sexual harassment. Sexual harassment (unlike sexual assault, domestic violence or stalking) is very broadly defined.

DFEH and the courts determine what constitutes actionable sexual harassment. Although certain actions involving sexual harassment may be inappropriate, the behavior must be severe or pervasive enough to alter the conditions of the work environment to be unlawful. This is because the court should not be involved in every workplace dispute involving even an awkward glance.

However, AB 3081 does not require a determination of whether the behavior is unlawful sexual harassment before the employee can take job-protected leave. The alleged sexual harassment does not even need to occur in the workplace or involve co-workers for this leave to apply.

Thus, because of the broad definition of sexual harassment and no legal determination, an employee can utilize a protected leave of absence simply because a co-worker made one, tasteless joke or someone accidentally brushed up against him or her. While this behavior may be inappropriate, it is not actionable and should not be the basis for a protected leave of absence—especially in comparison to the type of harm suffered by victims of sexual assault, domestic violence and stalking who are provided job-protected leave under current law.

Ripe for Abuse

AB 3081 extends employment protections to immediate family members of the victim. The employee could claim job-protected leave and the employee’s immediate family member also could take job-protected leave. This type of leave is clearly ripe for abuse.

California already provides leaves of absence for family members and is recognized by the National Conference of State Legislatures as one of the most family-friendly states. Imposing another leave of absence is unnecessary and overly burdensome because family members can take time off by utilizing other types of leave.

Extends Statute of Limitations

AB 3081 contradicts the current statute of limitations prescribed by FEHA for sexual harassment. For an individual to file a discrimination, harassment or retaliation complaint in civil court, he/she must first exhaust his/her administrative remedy by filing a claim with the DFEH. The current statute of limitations for filing a claim with DFEH is one year from the most recent harassing or discriminatory event.

AB 3081 not only triples the statute of limitations for sexual harassment complaints, but also provides the Labor Commissioner with jurisdiction over these complaints. Jurisdiction over sexual harassment complaints should remain with DFEH to prevent confusion and contradictory regulations.

Unfair, Rebuttable Presumption

Under AB 3081, it is presumed that 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.

Given this provision, if an employee who files a claim for sexual harassment is caught stealing the next day and immediately terminated, the employee will be protected under this automatic, rebuttable presumption. The burden will fall on the employer to prove its actions were valid, instead of the burden falling on the employee.

Statutory Joint Liability

There is no basis under which a business that contracts for services should be deemed statutorily liable for sexual harassment or sexual discrimination when there is absolutely no way in which that contractor can engage or force the labor contract company to comply with provisions of FEHA or the Labor Code.

Moreover, this statutory mandate ignores and disrupts current law that already provides liability for sexual harassment claims in relation to third party relationships.

Current law already provides an adequate pathway for civil liability for a business that is actually controlling the employees of another, and there is no basis for that analysis to be completely disregarded under this bill.

See Senate Committees: Page 6
Employment-Related Job Killers Move to Assembly Fiscal Committee

From Page 1

the use of a general release or nondisparagement clause in employer/employee contracts.

SB 1284

CalChamber has identified SB 1284 as a job killer because it could create a false impression of wage discrimination or unequal pay where none exists and, therefore, subject employers to unfair public criticism, enforcement actions, and significant litigation costs to defend against likely meritless claims.

CalChamber is leading a large coalition opposing SB 1284 and has raised the following additional concerns:

• Exposes Employers to Public Shaming for Wage Disparities That Are Not Unlawful. The potential disclosure of the pay data could lead to public shaming of employers because, while the aggregate data might disclose wage disparities, wage disparities do not automatically equate to wage discrimination or a violation of law.

• Requires California Employers to Comply with a New, Separate Mandate. As drafted, SB 1284 presumes that the federal EEO-1 pay data reporting requirement already went into effect; however, the pay data provision of the EEO-1 reporting requirement was suspended by the federal government. Thus, SB 1284 creates a new reporting requirement for employers that do business in California.

• Relies Upon Job Titles and Classifications to Compare Jobs, Which Undermines the Intent of the Fair Pay Act to Compare “Substantially Similar” Positions and, as Such, Will Provide a False Impression of Wage Discrimination When None May Exist. Collecting pay data in the aggregate will likely demonstrate wage disparity amongst employees in the different job classifications or titles according to gender that are not unlawful.

• Fails To Take into Consideration an Employer’s Objective, Non-Discriminatory, “Bona Fide Factors” for the Wage Disparity and, Therefore, Undermines the Balance Provided by the Labor Code. These factors will not be effectively captured in the aggregate data under SB 1284 to adequately defend against undue criticism and, therefore, will create the impression of an equal pay violation where none actually exists.

• Utilizes Data that May Be Affected by Employee Choices. SB 1284 requires employers to provide pay data regarding an employee’s total earnings as shown on the Internal Revenue Service’s Form W-2. However, a W-2 form does not take into account an employee’s own decisions and actions that can also create wage disparity that has nothing to do with discriminatory intent by the employer.

SB 1300

SB 1300 is a job killer because it creates a new stand-alone private right of action for failure to prevent harassment or discrimination where no harassment or discrimination actually occurred and limits the use of nondisparagement agreements and general releases. These provisions will significantly increase litigation against California employers and limit their ability to invest in their workforce.

CalChamber is also leading a large coalition opposing SB 1300 because the bill:

• Allows Anyone to Sue a Company for Failure to Prevent Harassment and Discrimination, Even If No Harassment or Discrimination Occurred. This radical lowering of the bar would result in a vast increase in litigation over potentially trivial workplace matters that do not rise to the level where the courts should be involved.

• Unnecessarily Creates a New Stand-Alone Private Right of Action. Any individual could pursue a claim against an employer seeking damages (compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees) simply by alleging that the employer did not take all reasonable steps to prevent harassment or discrimination when no harassment or discrimination actually occurred.

• Is Unnecessary and Exposes Employers to Costly Litigation. Fair Employment and Housing Act (FEHA) litigation is expensive. A 2015 study by insurance provider Hiscox about the cost of employee lawsuits under FEHA estimated that the cost for a small- to mid-size employer to defend and settle a single plaintiff discrimination claim was approximately $125,000.

• Prohibiting General Release Provisions Will Deter Employers from Conducting Self-Audits and Providing Severance Agreements. Not only is the language of SB 1300 unclear, but the bill also provides a disincentive to employers to take remedial action, such as wage-and-hour self-audits.

• Will Chill the Use of Settlement Agreements, Thereby Disadvantaging Employers and Employees Alike. As the benefit of a settlement agreement for the employer is reduced, the less likely an employer is to settle claims out of court. Thus SB 1300 will drive employers to fight these cases in court instead of utilizing early resolution.

Key Votes

Both SB 1284 and SB 1300 passed Assembly Judiciary on votes of 7-3:

Ayes: Chau (D-Monterey Park), Chiu (D-San Francisco), Gabriel (D-Encino), Holden (D-Pasadena), Kalra (D-San Jose), Reyes (D-Grand Terrace), M. Stone (D-Scots Valley).

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

Action Needed

The CalChamber is asking members to contact their Assembly representatives and members of Assembly Appropriations to urge them to oppose SB 1284 and SB 1300.

Staff Contact: Laura Curtis

Senate Committees OK Conflicting Mandate, Pathway to Litigation

From Page 5

Key Votes

• AB 3081 passed Senate Judiciary on April 26, 5-2:

Ayes: Hertzberg (D-Van Nuys), Jackson (D-Santa Barbara), Monning (D-Carmel), Stern (D-Canoga Park), Wieckowski (D-Fremont).

Noes: Anderson (R-Alpine), Moorlach (R-Costa Mesa).

• Senate Labor and Industrial Relations approved the bill on April 27, 4-1:

Ayes: Lara (D-Bell Gardens), Jackson (D-Santa Barbara), Mitchell (D-Los Angeles), Wieckowski (D-Fremont).

Noes: J. Stone (R-Riverside County).

Staff Contact: Laura Curtis
Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

New Recycling/Composting Requirements Moving in Legislature

Legislation imposing new recycling and composting requirements for disposable food service packaging at certain state facilities passed an Assembly policy committee this week despite opposition from the California Chamber of Commerce and other groups.

SB 1335 (Allen; D-Santa Monica) forces food service facilities operating in California state agencies or facilities to stop using disposable food service ware by 2021 unless 75% or more of the packaging can be recycled or composted.

Since the mandated recycle/compost rate is not achievable within the time frame allotted, the bill serves as a “de facto” ban on single-use cups, take-out containers, plates, trays and bowls in all state facilities.

In a letter to the Assembly Natural Resources Committee, the CalChamber and coalition note that they support efforts to increase the amount of disposable food service packaging that is diverted from disposal, but the bill sets arbitrary and vague standards for the types of disposable food service packaging that certain state facilities may use.

Accordingly, the CalChamber and coalition are opposing SB 1335 unless it is amended. In its current form, SB 1335 hurts California manufacturers, increases costs for state agencies and restaurants, and arbitrarily picks winners and losers in the marketplace.

At a minimum, SB 1335 should be material neutral, the letter states. The bill should specify clear and measurable criteria to guide how the California Department of Resources Recycling and Recovery (CalRecycle) determines that a package is “prone” to become litter.

Moreover, portions of SB 1335 that duplicate the science-based food packaging requirements already being developed by the state Department of Toxic Substances Control should be deleted.

The CalChamber and coalition agree that manufacturers and end users of disposable food service products have a role to play in supporting increased diversion of the products from landfills. Once the product leaves the restaurant, however, it is up to the customer to ensure the product is either recycled or composted (where programs exist).

A shared responsibility approach is needed if the state is to increase the amount of material that is recycled, recovered or composted.

Key Vote

SB 1335 passed Assembly Natural Resources on June 25, 7-3:

Ayes: Chau (D-Monterey Park), Eggman (D-Stockton), Limón (D-Goleta), McCarty (D-Sacramento), Muratsuchi (D-Torrance), Reyes (D-Grand Terrace), M. Stone (D-Scotts Valley).

Noes: Acosta (R-Santa Clarita), Flora (R-Ripon), Melendez (R-Lake Elsinore).

Staff Contact: Adam Regele

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

Wilmington, CA. (310) 984-6670.
Hong Kong Food Expo. CalAsian Chamber. August 14–20, Hong Kong. (916) 389-7470.
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.
Save 20% or More on Mandatory Midyear Poster Updates

On July 1, 2018, minimum wage increases take effect in 10 California localities. (States of Nevada and Oregon have mandatory updates too.) This requires updated postings at every workplace or job site on that date.

Where your employees work affects which updated posters apply to you. Cities are enforcing their local ordinances!

Now through June 30, 2018, save 20% on posters with required midyear updates. Preferred/Executive members receive their 20% member discount in addition to this offer.

ORDER NOW at calchamber.com/july1 or call (800) 331-8877. Use priority code PLY3.