Limit on Use of Settlement/Arbitration Agreements Passes

A California Chamber of Commerce-opposed job killer bill to limit the use of settlement agreements and arbitration agreements for labor and employment claims passed the Senate this week on a vote of 26-12 and is on its way to the Governor.

The CalChamber has tagged AB 3080 (Gonzalez Fletcher; D-San Diego) as a job killer because it will create more litigation, significant delays in the resolution of disputes, and higher costs for employers and employees.

Besides interfering with and essentially eliminating settlement agreements for labor and employment claims, AB 3080 exposes employers to criminal liability regarding arbitration agreements and essentially prohibits arbitration of labor and employment claims as a condition of employment.

AB 3080 is likely preempted under the Federal Arbitration Act (FAA) and will be reviewed by the Governor.

Opposition Stops Harmful Proposals in Closing Days of Legislative Session

A number of California Chamber of Commerce-opposed bills missed the August 17 deadline to move beyond the fiscal committees of either the Assembly or the Senate.

• Former job killer SB 1284 (Jackson; D-Santa Barbara), a bill dealing with pay data disclosure, was held on the Assembly Appropriations Committee suspense file last week and is likely dead for the year.

The CalChamber removed SB 1284 from the job killer list after August 8 amendments helped rectify the public shaming aspect of the bill. The CalChamber remains opposed to SB 1284 because of the administrative burden it still places on employers by requiring them to turn over pay data information that could give the false impression of pay disparity where none may exist.

• Former job killer AB 1761 (Muratsuji; D-Torrance), dealing with hotel worker panic buttons, was held in the Senate Appropriations Committee.

The CalChamber removed AB 1761 from the job killer list after May 9 amendments, but remained opposed unless the bill was further amended because it creates unworkable requirements for paid leave, allows for a false impression of pay disparity, and exposes employers to criminal liability.

Just one week remains before the Legislature adjourns for its final recess on August 31. The fate of many priority bills for business awaited action by either the California Senate or Assembly as this edition of Alert went to print.

The high volume of bills typically passed in the closing days of the session, the Governor will have until September 30 to sign or veto bills passed by the Legislature before September 1 and in the Governor’s possession on or after September 1.

Watch California Chamber of Commerce online communications, including Facebook and Twitter, as well as the Capitol Insider blog, for updates on legislative action.

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Law, as well as other protections.

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leave under both federal and California

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surrogate. What leave laws would apply

One of my employees is a gestational

er surrogate. What leave laws would apply
to her?

A gestational surrogate is someone

who carries a pregnancy and gives birth
to a child for another person or couple,

also known as the “intended parents.”

Regardless of the reason for the preg-
nancy, your employee may have rights to
leave under both federal and California
law, as well as other protections.

Surrogate Pregnancy: Same Protections, Leave Rights Generally Apply

5 or More Employees

If you have five or more employees,
your pregnant employee would be cov-
ered by California’s pregnancy disability
leave (PDL) law. PDL allows an
employee to take up to four months, or
17 1/2 weeks, of protected leave when the
employee is disabled by pregnancy. The
employee’s health care provider deter-
mines how long the employee is disabled
and needs leave, which can be both
before and after the birth of the baby.

The fact that the employee is pregnant
as a surrogate doesn’t have an impact on
her right to leave—the reason for her
pregnancy is irrelevant. (In addition to
leave, PDL requires employers to provide
reasonable accommodations to employ-
ees because of pregnancy, if needed.)

50 or More Employees

If you have 50 or more employees,
your employee may also be eligible for
up to 12 weeks of leave under the federal
Family and Medical Leave Act (FMLA).

The FMLA treats pregnancy as a
serious health condition, so if your
employee meets the FMLA eligibility
requirements (has worked for you for at
least 12 months, has worked at least
1,250 hours in the 12 months before
taking leave, and works at a worksite
with 50 or more employees in a 75-mile
radius), her leave will be PDL and FMLA
running concurrently.

Again, the reason for the employee’s
pregnancy is irrelevant to her right to
time off—what matters is that she is
disabled by her pregnancy.

Post-Childbirth

Once your employee has recovered
from childbirth and her doctor returns her
to work, her leave rights would likely
end. Various leave laws do give eligible
employees the right to take protected
leave to bond with a new baby:

• the FMLA and the California Family
Rights Act (CFRA)—which apply to
employers with 50 or more employees; and

• California’s New Parent Leave Act
(NPLA)—which applies to employers
with 20 to 49 employees.

See Surrogate Pregnancy: Page 4

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

HR Boot Camp. CalChamber. September
5, Long Beach – SOLD OUT; October
17, San Francisco – SOLD OUT;
December 7, Oakland. (800) 331-8877.

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

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

HR Symposium. CalChamber. November
2, San Francisco. (800) 331-8877.

Business Resources

BusinessH2O Water Innovation Summit:
Best Practices from the U.S. and
Israel. U.S. Chamber of Commerce.
December 10–11, Phoenix, Arizona.
(202) 463-5484.

International Trade

Lunch with Mr. Ravi Shankar Prasad,
Minister for Electronics and IT, Law
and Justice of India. CalChamber,
California Business Roundtable, Bay
Area Council, DLA Piper and McKin-
sey Consulting. August 27, San
Francisco. (209) 756-1202.

Doing Business in Argentina. U.S.
ChamberPAC Advisory Committee:
September 6, Dana Point
Board of Directors:
September 6–7, Dana Point
International Trade Breakfast:
September 6, Dana Point
Public Affairs Conference:
November 27–28, Huntington Beach

CalChamber Calendar

Water Committee:
September 6, Dana Point
ChamberPAC Advisory Committee:
September 6, Dana Point
Board of Directors:
September 6–7, Dana Point
International Trade Breakfast:
September 6, Dana Point
Public Affairs Conference:
November 27–28, Huntington Beach

Next Alert: September 7
CalChamber 2018 HR Symposium Presents One Informative Day by San Francisco Bay

The Internal Revenue Service (IRS) is encouraging everyone to check their withholding to avoid an unexpected tax bill or penalty at tax time.

The new tax law adopted in December 2017 could affect how much tax employees should have their employer withhold from their paycheck.

The IRS said it is especially important for taxpayers who:

- Are a two-income family;
- Have two or more jobs at the same time;
- Work a seasonal job or work only part of the year;
- Claim credits like the child tax credit;
- Have dependents age 17 or older;
- Itemized deductions on 2017 returns;
- Have high income or a complex tax return;
- Had a large tax refund or tax bill for 2017.

### IRS Encouraging ‘Paycheck Checkup’ to Prevent Tax-Time Surprise

The IRS has launched a series of Tax Reform Tax Tips, a Tax Tips email subscription program and YouTube videos to walk taxpayers through what they need to know about the new tax laws and how to fill out the appropriate forms. More information is available under the Tax Reform button at the IRS website, www.irs.gov.
CalChamber: Veto Limitation on Settlement/Arbitration Agreement Use

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only delay the resolution of claims. Banning such agreements benefits the trial attorneys, not the employer or employee.

Delays
AB 3080 interferes with and will essentially eliminate settlement agreements as it prohibits an employer from requiring an applicant or employee to waive any right, forum, or procedure, or the right to pursue any claim in court under the Fair Employment and Housing Act (FEHA) or the Labor Code as a condition of any “contractual agreement.”

Precluding the informal resolution of civil claims would simply overwhelm California’s judiciary system by forcing all claims to be tried by a jury or judge, creating significant delays that would harm individuals who have suffered a wrong.

Criminal Liability
Given where AB 3080 provisions have been placed in the Labor Code, any violation will be a misdemeanor. Accordingly, an employer will face not only civil liability for any violation of the various provisions of AB 3080, but can face criminal charges as well.

Pre-empted by Federal Law
AB 3080 prohibits arbitration agreements made as a condition of employment for any claims arising under the Labor Code or FEHA and/or including class action waivers. Arbitration is a less formal, less costly, and less time-consuming forum to resolve a dispute. The cost savings is not in the compensation paid to the employees; it is in the fees paid to attorneys.

Although studies demonstrate that employees generally win the same percentage of cases in arbitration, if not more, the trial attorneys may not recover as much in fees. The ultimate beneficiaries of an arbitration and class action waiver ban are trial attorneys, not the employers and not the employees.

AB 3080 is also likely preempted, and therefore will create significant litigation without actually providing any benefit to employees. AB 3080 is very similar to AB 2617 (Weber; D-San Diego), passed and signed into law in 2014, which prohibited as “a condition of entering into a contract for the provisions of goods or services” the waiver of a forum for the resolution of claims, i.e. an arbitration clause. On March 14, 2018, the Second District Court of Appeal held in Saheli v. White Memorial Medical Center that AB 2617 was preempted under the FAA. The court stated:

“The above legislative history clearly shows the motivating force behind the enactment of AB 2617 was a belief that arbitration is inherently inferior to the courts for the adjudication of Ralph Act and Bane Act claims. In accordance with this dim view of arbitration, the Legislature placed special restrictions on waivers of judicial forums and procedures in connection with such claims. In practice, such restrictions discourage arbitration by invalidating otherwise valid arbitration agreements. It is precisely this sort of hostility to arbitration that the FAA prohibits.”

Similar to AB 3080, the “special restrictions” at issue in AB 2617 was that arbitration clauses could not be created as a condition of the contract. The court in Saheli deemed such restrictions as preempted under FAA.

The decision in Saheli is consistent with a long history of cases on the issue of FAA preemption. To the extent that AB 3080 will undoubtedly be challenged as preempted under the FAA if passed and potentially invalidated, it will serve only to create additional litigation and not necessarily benefit employees as intended.

Action Needed
The CalChamber is asking members to contact the Governor and urge him to veto AB 3080. An easy-to-edit letter is available in the Grassroots Action Center at www.calchambervotes.com.
Staff Contact: Jennifer Barrera

Surrogate Pregnancy: Same Protections, Leave Rights Generally Apply

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If the surrogate surrenders the baby to the intended parents, which is how surrogacy is designed to work, your employee wouldn’t have a baby with whom to bond and thus wouldn’t have a legal right to baby-bonding leave. (The intended parents, however, may be eligible for baby bonding leave from their employment.)

Lactation Accommodation
Once your employee is released to return to work, you may need to provide her with a lactation accommodation. Both federal and California law require employers to provide reasonable accommodations to employees who want to express (pump) breastmilk at work. You must provide your employee with a reasonable amount of break time to express breast milk, and the use of a private place to express milk, other than a toilet stall, in close proximity to the employee’s work area.

You can require that the employee use her paid rest breaks, but if she needs additional time beyond the normal rest breaks to express milk, you must provide it, although it can be unpaid. She also can use her meal break to express milk. (San Francisco employers have additional requirements under that city’s Lactation in the Workplace ordinance.)

Lastly, don’t forget that pregnancy, childbirth, breastfeeding and related medical conditions are protected characteristics under federal and California law. It is unlawful to discriminate against an employee because of pregnancy or to retaliate against an employee who took PDL/FMLA leave because of pregnancy. These protections will extend to all your pregnant employees, including those who are surrogates.

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.
CalChamber Welcomes New Consul General of China in San Francisco

On Monday, August 20, the new Consul General of China in San Francisco, Ambassador Wang Donghua, visited the California Chamber of Commerce. Joining CalChamber President and CEO Allan Zaremberg in welcoming the new Consul General were Susanne T. Stirling, CalChamber vice president of international affairs, and CalChamber Board Members Mark Jansen, Blue Diamond Growers and CalChamber Council for International Trade chair, and Margaret Wong, McWong International, Inc.

The delegation from the Chinese Consulate, which also included Deputy Consul General Ren Faqiang and Consul Jin Wei, welcomed the continued partnership with the CalChamber under the new Consul General’s leadership.

Topics included the importance of trade between California and China, and the current trade dispute with tariffs. All agreed on the importance of a process for resolution to be established prior to the upcoming midterm U.S. elections.

There also was agreement that raising tariffs results in higher prices to the consumer for the specific product protected and in limited choices of products for consumers. Further, raising tariffs can cause a net loss of jobs in related industries, retaliation by U.S. and California trading partners, and violates the spirit of our trade agreements.

Trade with China

U.S.-China trade has risen rapidly over the past several decades. Total trade in goods between the two nations has increased from $4.8 billion in 1980 to $635.96 billion in 2017. U.S. exports to China in 2017 were approximately $130.37 billion.

In 2017, China continued as California’s third largest export destination, with approximately $16.4 billion in exports. Computer and electronic products accounted for 26.6% of exports, totaling $4.36 billion. Transportation equipment brought in $2.55 billion with 15.5% and non-electrical machinery brought in $2 billion, accounting for 12.5%. This was followed by waste and scrap with $1.7 billion and 10.4% (U.S. Department of Commerce).

Foreign Direct Investment

China was the third fastest-growing source of total foreign direct investment (FDI) stock in the United States in 2016, investing $58 billion in the U.S. U.S. FDI into China totaled $92 billion in 2016. Chinese FDI into the U.S. supported 43,800 jobs and contributed $3.5 billion to expanding U.S. exports and another $545 million to research and development. The top industry sectors of Chinese FDI are software and information technology (IT) services, electronic components, communications, industrial machinery, business services, and auto components. (Select USA)

FDI based on balance of payments and direct investment position from China into the U.S. totaled $39.5 billion in 2017, and FDI from the U.S. into China totaled $107.5 billion in the same year (Bureau of Economic Analysis).

In Southern California, the No. 8 country for FDI through foreign-owned enterprises (FOEs) is China. Chinese FOEs in Southern California provide almost 16,000 jobs through more than 450 firms. This amounts to $990 million in wages. The top sectors of Chinese FOEs are professional and business services, information, transportation warehousing and utilities, manufacturing, and wholesale trade. (Los Angeles Business Journal, V. 40 No. 21, 2018)

CalChamber Position

The CalChamber supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

Staff Contact: Susanne T. Stirling
Visit with Tatarstan Representatives Promotes Trade and Investment

On Wednesday, August 15, the California Chamber of Commerce met with representatives from the Tatarstan Investment Development Agency of the Republic of Tatarstan in the Russian Federation to promote trade and investment.

The delegation was led by Taliya Minullina, CEO of the Tatarstan Investment Development Agency and a member of the Tatarstan Government in the Russian Federation. She was accompanied by Robert Galiullin, trade representative of the Republic of Tatarstan, and Kirill Gladnev, chief executive assistant.

The Tatarstan Investment Development Agency (TIDA) is a special executive body of the Government of Tatarstan founded in 2011 to carry out investment promotion and facilitation. TIDA is responsible for all international investment and business projects in the Republic of Tatarstan. TIDA focuses its efforts on attracting investment into eight priority sectors of the Tatarstan economy: chemical & petrochemical, machinery & automotive parts, construction & building materials production, agriculture & food processing, medicine & pharmaceuticals, IT & telecommunications, Halal industry, and service industry & tourism.

The Republic of Tatarstan is located about 500 miles east of Moscow, and is geographically similar in size to Ireland. Tatarstan is an oil production and petrochemical center. The population of Tatarstan is more than 3.7 million people. The Republic of Tatarstan is the most economically developed region of the Russian Federation.

A delegation led by the President of the Republic of Tatarstan will be coming to San Francisco in October accompanied by business representatives and Tatarstan Chamber of Commerce leaders.


Staff Contact: Susanne T. Stirling

Opposition Stops Harmful Proposals in Closing Days of Legislative Session

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patchwork of state and local rules and unnecessary signage in regards to providing protection for hotel employees working alone and the provision of panic buttons.

Also held on the Senate Appropriations suspense file were:

- **AB 1335 (Bonta; D-Oakland) Lawsuit Exposure.** Increases frivolous liability claims and exposes beverage manufacturers and food retailers to fines and penalties by mandating state-only labeling requirements for sugar-sweetened drinks.

- **AB 2094 (Kalra; D-San Jose) Increased Costs for Hazardous Waste Operators.** Imposes unnecessary new costs on hazardous waste permit operators and further delays permit processing by arbitrarily increasing the frequency of inspections for hazardous waste facilities rather than focusing on improving the existing inspection process.

- **AB 2570 (Nazarian; D-Sherman Oaks) Misguided Cleaning Product Procurement Mandate.** Imposes a misguided cleaning product procurement mandate on California public schools by requiring schools to purchase and use “environmentally preferable cleaning products,” which exclude critical product certification alternatives and the use of disinfectant products to prevent disease and infection.

- **AB 2627 (Kalra; D-San Jose) Migratory Birds.** Restricts land use by imposing new requirements on the take of migratory nongame birds.

CalChamber-Sponsored Seminars/Trade Shows

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- **Commercial Service.** August 30, Webinar. (800) 872-8723.

- **83rd Thessaloniki International Fair.** HELEXPO. September 8–16, Thessaloniki, Greece.

- **Grow Your Sales, Brand and Business in Israel.** IBT Online. September 12, Webinar.

- **Brazil FinTech Roadshow. Fintech.** September 17–19, São Paulo, Brazil. (772) 388-6496.


- **Central America Energy Transition Roundtable. Institute of the Americas.** September 20, San Jose, Costa Rica. (858) 453-5560.


- **China International Import Expo.** China International Import Export Bureau. November 5–10, Shanghai, China.
Public Affairs Conference Registration Opens

The dust will have settled on California’s 2018 mid-term elections when attendees gather for the California Chamber of Commerce Public Affairs Conference on November 27–28 in Huntington Beach. Election results and their meaning for the state will dominate the topics.

**Tuesday, November 27**

Opening the conference on the afternoon of Tuesday, November 27 will be a presentation by PSB Research pollsters Robert Green and Adam Rosenblatt based on the annual CalChamber survey of California voter attitudes.

Next, a panel moderated by Martin Wilson, CalChamber executive vice president, public affairs, will review the results of statewide campaigns.

CalChamber President and CEO Allan Zaremberg will moderate a “New Kids on the Block” session with a bipartisan group of newly elected members of the Senate and Assembly—the 2019 freshman class.

**Wednesday, November 28**

“Climate Resiliency & Critical Infrastructure” will be the focus of panel discussions the morning of Wednesday, November 28. Panelists will include a bipartisan group of elected officials.

Featured luncheon speakers will be Paul Begala, Democratic political analyst and commentator for CNN; and Mike Murphy, a Republican media consultant and partner in the Revolution Agency.

Following lunch, Zaremberg will be the moderator of a wide-ranging look at the incoming state administration. Questions for panelists will include: How will the new governor differ from the termed-out Governor Jerry Brown? How will the new administration be staffed and who will serve on his Cabinet?

The final legislative panel will provide a preview of the legislative priorities for the class of 2019/2020.

**Registration**

More information on the agenda, registration, lodging and sponsorship opportunities is available on the conference website at [www.calchamber.com/2018publicaffairs](http://www.calchamber.com/2018publicaffairs).

**Major Sponsors**

The major sponsors of the 2018 Public Affairs Conference are the California Resources Corporation, Google, Pacific Gas & Electric Company and Southern California Edison.

HR Symposium Presents One Informative Day by San Francisco Bay

From Page 3

#TimesUp movements shows a substantial increase in alleged harassment claims and, consequently, a rise in workplace investigations. But here’s the twist for HR: We’re seeing more of what were traditional employee relationship issues popping up as harassment claims. Discover how these new claims pose a greater challenge for HR and how this impacts your internal investigation process.

* 3:00 p.m.–4:00 p.m. Navigating Reasonable Accommodation Requests: How to Know When It Is No Longer Reasonable

Jennifer Shaw, Principal, Shaw Law Group.

Managing reasonable accommodation requests can be a daunting task. Must an employer accommodate all employee requests? Is there a process you must follow? When is it OK to terminate someone? Learn how to manage everything from accommodation requests for working from home to requests for a first-class seat on a plane. Pick up tips on handling extended leave beyond FMLA/CFRA, requests for continuation of benefits, finding workable solutions, as well as discerning between what’s reasonable and unreasonable.

**Registration**

To register or for more information on the HR Symposium and presenters, visit [www.calchamber.com/hrsym2018](http://www.calchamber.com/hrsym2018).

The symposium is approved for 8 California recertification credits through the HR Certification Institute (HRCI), 8 professional development credits for the Society for Human Resource Management (SHRM) and 8 MCLE credits.

CalChamber preferred and executive members receive a 20% discount.

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**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](http://calchamber.com/discounts) or call Customer Service at (800) 331-8877.

Partner discounts available to CalChamber Online, Preferred and Executive members.
Stop sexual harassment in the workplace before it starts.

Demonstrate your pledge against disrespectful and unprofessional behavior in your California workplace by providing all employees with harassment prevention training—including mandatory training for new supervisors and supervisors due for retraining.

CalChamber’s California-specific training reinforces your company’s zero-tolerance policy by educating employees on what harassment is, what it looks like, its consequences and what to do if they witness or experience harassment.

Take 20% off every online California harassment prevention seat you purchase now through 9/21/18.

Use priority code CHPA. Preferred and Executive members receive this offer in addition to their 20% member discount.

PURCHASE online at calchamber.com/hptalert or call (800) 331-8877.