

ALERT

CalChamber Launches The Workplace Podcast

First Episode Discusses Sexual Harassment



This week the California Chamber of Commerce launched **The Workplace**, a podcast that provides expert and entertaining commentary on issues critical to California employers and employees.

Episodes will include discussions about California employment laws, legislative proposals, and national and state politics.

To listen or subscribe, visit www.calchamber.com/theworkplace.

Episode 1

Episode 1 features Erika Frank, CalChamber executive vice president, legal affairs and general counsel, and Laura Curtis, CalChamber policy advocate, as they discuss sexual harassment in the workplace, the #MeToo movement and how to lead the charge in preventing harassment from happening in the workplace.

Frank and Curtis also discuss California's Fair Employment and Housing Act (FEHA), which obligates all California employers to take steps to prevent harassment from occurring in the workplace, regardless of number of employees.

"For employers it's very important to look at this as a benefit, a benefit to them because it's only going to make their workplace a better place to work, where the culture is all in agreement as far as what's appropriate conduct and what's not," says Frank.

In addition, employers need to be aware of new sexual harassment prevention training requirements that will have an impact on virtually every business in the state and all those businesses' employees and supervisors.

SB 1343 (Chapter 956, Statutes of 2018) requires that all employers of five or more employees provide 1 hour of sexual harassment and abusive conduct prevention training to non-managerial employees and 2 hours of sexual harassment and abusive conduct prevention training to managerial employees once every two years.

Under SB 1343, there is no requirement that the five employees or contractors work at the same location or that all work or reside in California.

Under the Department of Fair Employment and Housing (DFEH) regulations, the definition of "employee" includes full-time, part-time and temporary employees.

State officials recently clarified that the new law requires all employees to be trained during calendar year 2019. This means that employees, including supervisors, who were trained in 2018 or before will need to be retrained again in 2019.

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Assembly Committee Passes Job Killer Bill



The first job killer bill identified by the California Chamber of Commerce this year passed an Assembly committee this week.

AB 51 (Gonzalez; D-San Diego) prohibits arbitration of labor and employment claims as a condition of employment.

Repeat Bill

The bill is virtually identical to 2018 legislation, **AB 3080 (Gonzalez; D-San Diego)**, which was vetoed by Governor Edmund G. Brown Jr. because he recognized that the measure **plainly violated federal law**. The bill also is similar to **AB 465 (R. Hernández; D-West Covina)**, which was vetoed in 2015.

AB 51 is a job killer due to the significant increased costs employers will face as a result of more litigation and the expense of delayed dispute resolutions.

Federal Preemption

In addition, it is well understood that if signed into law, the proposal would be preempted by federal law. Both the California Court of Appeal and the U.S. Supreme Court have specifically held that state legislation trying to ban arbitration agreements is preempted by federal law.

In fact, AB 51's limitation on the ability to form an arbitration agreement as a condition of employment conflicts with U.S. Supreme Court Justice Elena

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Labor Law Corner

Advance Scheduling, Meeting Duration Affect Reporting Time Pay



David Leporiere
HR Adviser

The employees of my store regularly work Monday through Friday. Every third Saturday of the month, I hold a staff meeting for all of my employees. I pay my employees for the actual length of the meeting, but last month the meeting ended 30 minutes early, and one of my employees claims I must pay for the full two hours. Is this true?

There is a requirement in the Califor-

nia Wage Orders referred to as “reporting time pay”—employers must pay employees a minimum of half their regularly scheduled hours of work, but in no case less than two hours.

A California appellate court, however, ruled in the case of *Aleman v. AirTouch Cellular*, 209 Cal.App. 4th 556 (2012), that where the employer schedules such meetings in advance, reporting time pay is not required so long as the employee works at least half of the hours scheduled for the meeting.

In your case, you scheduled the meeting in advance, and according to your question, the meeting lasted more than

one hour (which is more than half of the two hours scheduled); therefore, you would not be obligated to pay reporting time pay.

You would be correct in paying your employees for the actual length of the meeting, provided it exceeds one hour.

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-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

Filling You in on Form I-9 and Related Issues. CalChamber. March 21, Webinar. (800) 331-8877.

HR Boot Camp. CalChamber. March 29, San Diego; April 12, Oakland; April 26, Costa Mesa; May 9, Sacramento; June 14, Walnut Creek; August 22, Pasadena; September 12, Sacramento. (800) 331-8877.

Scheduling Employees and Everything in Between Webinar. CalChamber. April 18, Webinar. (800) 331-8877.

Leaves of Absence: Making Sense of It All. CalChamber. June 21, San Diego; August 16, Oakland. (800) 331-8877.

International Trade

Doing Business in Spain and Portugal Webinar. U.S. Commercial Service.

March 18, Webinar. (800) 872-8723.

Doing Business in Nordics Webinar. U.S. Commercial Service. April 16, Webinar. (800) 872-8723.

Doing Business in Austria and Hungary Webinar. U.S. Commercial Service. April 24, Webinar. (800) 872-8723.

Understanding Brexit. CalChamber and World Affairs, Sacramento. April 24, Sacramento. (916) 444-6670 ext. 232.

Aerospace Fair Mexico 2019. Mexican Government. April 24–27, Zumpango, Mexico. +52 (55) 7098-5299.

93rd Annual World Trade Week: SoCal—The Engine of Global Trade and Economic Growth. Los Angeles Area Chamber. May 2, Los Angeles. (213) 580-7500.

Trade Winds Indo-Pacific Forum and

Mission 2019. U.S. Commercial Service. May 6–13, India, Bangladesh, and Sri Lanka. (304) 347-5123.

Doing Business in Czech Republic and Slovakia Webinar. U.S. Commercial Service. May 15, Webinar. (800) 872-8723.

Annual Export Conference. National Association of District Export Councils. May 21–22, Arlington, Virginia. (407) 255-9824.

SelectUSA Investment Summit. SelectUSA. June 10–12, Washington, D.C. (800) 424-5249.

Doing Business in Baltics Webinar. U.S. Commercial Service. June 12, Webinar. (800) 872-8723.

Think Asia, Think Hong Kong. Hong Kong Trade Development Council. September 20, Los Angeles. (213) 622-3194.

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

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

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CalChamber Calendar

Water Committee:

March 14, Santa Monica

Board of Directors:

March 14–15, Santa Monica

International Breakfast:

March 15, Santa Monica

Capitol Summit:

May 22, Sacramento

International Forum:

May 22, Sacramento

Host Breakfast:

May 22–23, Sacramento



U.S. High Court Reverses Equal Pay Case; Judge Can't Adjudicate from Beyond Grave



The U.S. Supreme Court has [reversed](#) a Ninth Circuit court case because the judge who wrote the opinion died before the opinion was issued and, therefore, his vote on the opinion could not

be counted.

In the now-reversed case, the Ninth Circuit had held that, under the federal Equal Pay Act, prior salary, whether alone or in combination with other factors, cannot justify a wage differential (*Rizo v. Yovino*, 887 F.3d 453 (9th Cir. 2018)).

An *en banc* panel of the Ninth Circuit decided the case on April 9, 2018. Ten

judges were on the panel and five of them joined the opinion written by the Honorable Stephen Reinhardt, creating a majority. However, after writing the majority opinion, but before the court issued the decision, Judge Reinhardt passed away.

The question before the U.S. Supreme Court was whether the Ninth Circuit could count Judge Reinhardt's vote toward the majority opinion when he was not living at the time the opinion was issued.

The court said no, Judge Reinhardt was not an active judge at the time the court issued the opinion and thus he didn't have the power to participate in the decision.

Therefore, the Supreme Court held that the Ninth Circuit erred in counting Judge Reinhardt as a member of the majority. As the Supreme Court explained: "That practice effectively

allowed a deceased judge to exercise the judicial power of the United States after his death. But federal judges are appointed for life, not for eternity."

The Supreme Court vacated the Ninth Circuit's decision and sent the case back to that court for further proceedings.

California Law

California employers should note that even though the Ninth Circuit's decision on the federal Equal Pay Act has been vacated, California's Fair Pay Act still prohibits employers from using prior salary to justify a wage differential.

California Chamber of Commerce members can read more about [Wage Equality and the Fair Pay Act](#) in the HR Library on [HRCalifornia.com](#).

Staff Contact: Erika Pickles

Seeking Nominations for Outstanding Small Business Leaders



The California Chamber of Commerce is seeking nominations for its annual Small Business

Advocate of the Year Award.

The award recognizes small business owners who have done an exceptional job with their local, state and national advocacy efforts on behalf of small businesses.

"Explaining how proposed laws and regulations will work in the real world is an essential part of every advocacy program," said Dave Kilby, CalChamber executive vice president, corporate affairs. "We encourage readers to submit

nominations of outstanding business spokespersons so we can recognize them at our annual Capitol Summit."

Application

The application should include information regarding how the nominee has contributed significantly as an outstanding advocate for small business in any of the following ways:

- Held leadership role or worked on statewide ballot measures;
- Testified before state Legislature;
- Held leadership role or worked on local ballot measures;
- Represented chamber before local government;
- Active in federal legislation.

The application also should identify

specific issues the nominee has worked on or advocated during the year.

Additional required materials:

- Describe in approximately 300 words why nominee should be selected.
- News articles or other supporting materials.
- Letter of recommendation from local chamber of commerce president or chairman of the board of directors.

Deadline: April 22

Nominations are due by April 22. The nomination form is available at www.calchamber.com/smallbusiness or may be requested from the Local Chamber Department at (916) 444-6670.

U.S. Trade Representative Releases Agenda for Free, Fair, Reciprocal Trade



The Office of the United States Trade Representative has released the 2019 Trade Policy Agenda and 2018 Annual

Report of the President of the United States on the Trade Agreements Program, outlining five major pillars to restore free, fair, and reciprocal trade.

According to a presidential news release, the report contains the following highlights:

Supporting National Security

Consistent with his national security strategy, President Donald J. Trump's trade policy agenda recognizes that economic prosperity at home is necessary for American power and influence abroad.

Free, fair, and reciprocal trade relations are critical to our national security policy, and form the cornerstone of the President's trade agenda.

The United States remains committed to working with like-minded countries to defend our common prosperity and security against all forms of economic aggression.

Strengthening U.S. Economy

The Trump administration's Trade Policy Agenda focuses on strengthening the American economy for the benefit of all Americans.

Negotiating Trade Deals

The administration is urging Congress to approve the United States-Mexico-Canada Agreement (USMCA)—a new trade regime for North America that will treat American workers and businesses much better than the outdated North American Free Trade Agreement (NAFTA).

The administration continues to press China to address long-standing U.S. concerns about unfair practices in that country.

The administration intends to launch new trade negotiations with Japan, the European Union, and the United Kingdom to provide even more opportunities for U.S. workers and exporters.

Further, President Trump will seek an extension of the Trade Promotion Authority (TPA) until 2021, to better negotiate fair and balanced trade agreements.

The administration remains open to potential future bilateral trade agreements, including in the Indo-Pacific and African regions.

Enforcing and Defending U.S. Trade Laws

In 2018, President Trump issued a series of trade actions under Section 201 to safeguard U.S. manufacturers from a flood of overseas imports. This was the first use of Section 201 in 16 years.

The President is ensuring that foreign companies are being held accountable to

their commitments to build products in the United States.

The Trump administration self-initiated a Section 301 investigation undertaking a detailed probe regarding technology transfers, unfair licensing practices, and intellectual property theft.

The Trump administration has initiated several Section 232 investigations into potential national security risks associated with imports of steel and aluminum.

Under President Trump, the United States has successfully litigated several World Trade Organization (WTO) disputes.

Reforming WTO

The United States will advocate sensible and fair reforms to the WTO, promoting rules for efficient markets, expanded trade, and greater wealth for all nations.

President Trump remains committed to working with all WTO members who share in the United States' goal of fair and reciprocal trade deals and relationships.

The United States aims to hold accountable countries that break the rules for their actions, while respecting the sovereignty of all nations.

The full report is available at the U.S. Trade Representative website <https://ustr.gov>.

Staff Contact: Susanne T. Stirling

Assembly Committee Passes Job Killer Bill

From Page 1

Kagan's opinion in *Kindred Nursing Centers Ltd. Partnership v. Clark* that federal law protects and preempts state law regarding both the formation of arbitration agreements, as well as the enforcement of arbitration agreements.

AB 51 also proposes to add a new private right of action under the Fair Employment and Housing Act (FEHA)

and exposes employers to criminal liability for any violation.

Key Vote

AB 51 passed the Assembly Labor and Employment Committee on March 6, 5-1.

Ayes: Bonta (D-Oakland), Carrillo (D-Los Angeles), Gonzalez (D-San Diego), Kalra (D-San Jose), Rivas (D-Arleta).

No: Flora (R-Ripon).

Not voting: Diep (R-Westminster).

2019 Job Killers

Track the current status of the job killer bills on www.calchamber.com/jobkillers or follow @CalChamber and @CAJobKillers on Twitter.

Staff Contact: Jennifer Barrera



Helping Business In A Global Economy

www.calchamber.com/international

Why Tax Reform Is Hard

**Loren Kaye**

Governor Newsom's musings have set tax reformers buzzing.

Deflecting a question at a budget briefing about where he stands on a ballot proposal to raise

property taxes on business, the Governor disclosed his "desire is to use this as an exercise in bringing the parties together to see if we can compromise on a more comprehensive tax package."

After years of stiff-arming by Governor Brown, could this be the moment for comprehensive tax reform? Will California taxpayers soon see a state budget featuring a progressive tax system, healthy revenues, but without our notorious volatility?

Not likely. To change the tax system, policy makers must overcome structural contradictions and constitutional barriers embedded in an unfriendly political landscape.

Volatility

First, a progressive tax system is unavoidably volatile. A "21st century tax system," either in the interest of more progressivity or more revenues, will lead to more volatility.

This has been most obvious with the evolution of the personal income tax, which today accounts for 70% of all General Fund revenues, compared to just 45% in the mid-1990s. With greater progressivity has come more volatility: taxes on capital gains have bounced between 3.4% and 11% of total General Fund revenues — which amounts to a

difference of more than \$10 billion a year, depending on the economic cycle.

The more stable major revenue source has been the tax on the sale of tangible goods, but what may seem to be a feature is now considered a bug.

Guest Commentary By Loren Kaye

More retail transactions today involve services rather than tangible goods. Reformers therefore insist that the sales tax be extended to services, to reflect the 21st century economy. But purchases of services are more likely to be sensitive to economic cycles than are purchases of goods. Consumers are more likely to forego car washes and landscaping services during a recession than they are clothes purchases. What could be more vulnerable to an economic cycle than real estate transactions or architecture fees?

If volatility is the question, then a tax on services may not be the answer.

Legal Questions

Second, tax reform is legally fraught. Much of California tax law is in the State Constitution, most famously property tax rates, and relevant to this discussion: the top income tax rates. Voters approved Proposition 55 in 2016, which froze tax rates on high earners into place until 2031. Therefore, any reform that anticipates replacing the most volatile aspect of California taxation with a more stable source must get approval from the voters at a statewide election.

Voter Actions

Finally, the reason that the tax system looks the way it does is because voters like it that way. In the teeth of the recession,

voters refused to renew a temporary tax approved by a supermajority of the Legislature that raised rates a small amount on each of the income, sales and car taxes.

When Governor Brown was faced with a deepening of the recession, and reluctance by Republican legislators to revisit the across-the-board increases, he turned to a tax he knew voters would approve: one that affected a relatively few wealthy taxpayers. He was right: Proposition 30 passed with 55% of the vote in 2012, and was re-upped with 63% of the vote in 2016.

Since 2016, state voters have also approved a tobacco tax and a targeted tax on a select category of corporations selling into California — neither of which could be considered a general, broad-based tax.

When it comes to a tax on services, voters may be more skeptical. A recent California Chamber of Commerce poll found that voters, by a 3 to 1 margin, oppose new taxes on services like lawyers, lawn care or automotive repair, even if applied only to businesses.

To be sure, not everyone is a tax reform skeptic. Senator Robert Hertzberg, a long-time proponent of "21st century" tax reform, on the occasion of the Governor's tax reform statement, agreed that "we are at a moment of great opportunity to make thoughtful reforms to our tax system."

Nevertheless, the more likely outcome of the early optimistic speculation will be either the gravitational pull of the status quo, or an old-fashioned tax hike dressed up in the finery of reform.

Loren Kaye is president of the [California Foundation for Commerce and Education](#), a think tank affiliated with the [California Chamber of Commerce](#).

Capitol Insider

presented by **CalChamber**

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.

The *Capitol Insider* blog presented by the California Chamber of Commerce offers



Registration Opens for Capitol Summit

Registration has opened for the 2019 California Chamber of Commerce Capitol Summit and related events, set for May 22–23 in Sacramento.

The half-day Capitol Summit on May 22 will feature legislative and election updates from CalChamber President and CEO Allan Zaremberg, other political insiders and CalChamber policy advocates.

After the Summit, attendees have the option to stop by the CalChamber International Forum (a separate RSVP is required).

The afternoon forum will focus on trade issues for the California trade/business community, including the consular corps.

Scheduled for the evening of May 22 is the Sacramento Host Reception. This event is co-sponsored by the CalChamber and the Sacramento Host Committee to provide networking opportunities for business leaders from industries throughout the state.

The reception also gives attendees the



opportunity to discuss key issues facing the state with other business leaders and elected officials. The evening event is a prelude to the Host Breakfast the next morning.

Featured speakers at the breakfast, now in its 94th year, traditionally have been the Governor of California and the chair of the CalChamber Board of Directors.

Register by May 10

The registration fee to attend the Capitol Summit, Host Reception and Host Breakfast is \$75 per person.

The registration deadline is Friday, May 10 OR until sold out. Space is limited.

For more information or to register, visit www.calchamber.com/summit.

Assembly Committee Moves Along Three Previously Vetoed Bills



OPPOSE

Employment Committee this week.

Passed with support from the five Democratic members of the committee were:

- **AB 9 (Reyes; D-San Bernardino)**

unnecessarily extends the statute of limitations from one year to three years for all discrimination, harassment and retaliation claims filed with the Department of Fair Employment and Housing (DFEH).

The CalChamber requests that AB 9 be amended to apply only to sexual

Three California Chamber of Commerce-**opposed** bills virtually identical to previously vetoed proposals were approved by the Assembly Labor and

harassment claims and explicitly address the retroactivity concerns. With these amendments, AB 9 could achieve its goal of providing sexual harassment victims with additional time to exhaust their administrative remedy, without overburdening DFEH and employers with additional litigation.

- **AB 170 (Gonzalez; D-San Diego)** expands joint liability for labor contractors to all employment-related harassment claims. This proposed mandate ignores and disrupts current law that already provides liability for harassment claims for third parties.

There is no basis for holding a business that contracts for services statutorily liable for the harassment of another's employees when there is no way in which that contractor can engage or force a labor contract company to comply with provisions of the Fair Employment and Housing Act (FEHA) or the Labor Code.

- **AB 171 (Gonzalez; D-San Diego)** places additional and duplicative sexual harassment protections in the Labor Code. Because those protections already are included in FEHA, AB 171 exposes employers to additional liability, including Private Attorneys General Act (PAGA) claims.

AB 171 unnecessarily expands employer liability. FEHA already allows victims who prevail in a sexual harassment retaliation lawsuit 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 FEHA remedies, but also lawsuits under PAGA.

AB 9 will be considered next by the Assembly Appropriations Committee, while AB 170 and AB 171 will go to the Assembly Judiciary Committee.

Staff Contact: Laura Curtis

CalChamber Explains Changes Needed So New Privacy Law Will Protect Privacy



The privacy law passed last year applies to businesses of all sizes and needs changes to clarify that consumer loyalty and rewards programs can continue, the California

Chamber of Commerce told a Senate committee this week.

Moreover, if the law's "incredibly overbroad" definition of personal information is not adjusted, "it will undermine existing privacy protective practices and impose significant operational costs on businesses," CalChamber Policy Advocate Sarah Boot told the Senate Judiciary Committee.

Boot presented the business perspective at the committee's March 5 informational hearing about the California Consumer Protection Act (CCPA) and the state of data privacy protection.

Consequences

Because the CCPA's definition of "personal information" is so overbroad, Boot said, as a practical matter, the term means "any information that **could in theory be** associated with a person or household."

Therefore, "If I have an online account with a store and I exercise my rights under CCPA, that store should be able to provide me with my account details or to delete them," she said.

"But that's only the beginning of what a business is required to do," Boot continued. "Let's say I also browse sales on the store's website or fill up shopping carts without logging in—and that store keeps

IP addresses to track how consumers use their website, but it doesn't link that data back with a person.

"Under the CCPA, the store could be required to search for every possible IP address they have that could in theory be linked back to me. Similarly, if I made purchases inside their brick-and-mortar store, they could be required to search security camera footage to where I appear on it.

"The only way for businesses to comply would be to identify people

are deidentified data and publicly available data.

Lawsuit Liability

Boot reiterated for the Senate committee a concern expressed at the Assembly informational hearing in February—that the CCPA creates an onerous private right of action, allowing anyone to sue businesses that have suffered a data breach without having to show proof of injury.

"The minimum statutory damages awarded could put folks out of business," she said.

Other Concerns

- Confusing language in the non-discrimination section of the CCPA raises doubts about the legality of loyalty and rewards programs offered by retailers, grocers, hotels and airlines. Unless the section is clarified, it will be up to the courts to determine the fate of these programs.

- Without clarification, the definition of "consumer" could be interpreted to include employees.

- The impact of the CCPA on targeted online

advertising deserves clarification. No personally identifiable information is being sold. The internet ecosystem—from small blogs to large publications—and businesses of all sizes depends on this advertising network to reach consumers.

The CalChamber is leading a coalition of concerned businesses that is working to fix flaws in the CCPA before it goes into effect on January 1, 2020. Legislation signed last year (SB 1121) corrected a handful of problems, but much more remains to be done.

Staff Contact: Sarah Boot



CalChamber Policy Advocate Sarah Boot describes for the Senate Judiciary Committee some of the changes needed in the California Consumer Privacy Act so it won't prevent businesses from offering popular loyalty/rewards programs to customers.

interacting with their business and to store that information together in one place, which would be hugely wasteful and harmful to consumer privacy."

She acknowledged that the CCPA contains an exemption stating that a business is not required to relink data that is "not maintained in a manner that would be considered personal information."

Given the CCPA's definition, however, "all data is personal information. So this exemption does not provide relief and should be fixed," Boot said.

Other definitions she said need adjusting so that businesses aren't discouraged from using privacy protective practices

THURSDAY, MARCH 21, 2019 | 10:00 - 11:30 AM PT

Filling You in on Form I-9 and Related Issues Webinar

When hiring any employee, employers are required by federal immigration law to verify that person's identity and eligibility to work in the U.S. by completing the *Form I-9*.

Both a complex and detailed process, the *Form I-9* comes with 15 pages of instructions. This webinar fills you in on avoiding costly mistakes as well as complying with California requirements prior to and following an ICE inspection.

Cost: \$199.00 | Preferred/Executive Members: \$159.20



This webinar is mobile-optimized for viewing on tablets and smartphones.

LEARN MORE at calchamber.com/mar21 or call (800) 331-8877.

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