

ALERT

U.S. Court Invalidates Anti-Arbitration Law



A ruling last week by U.S. District Court Judge Kimberly Mueller halted enforcement of and invalidated in full an anti-arbitration law identified by the California Chamber of

Commerce as a job killer.

The law, **AB 51 (Gonzalez; D-San Diego)**, would have banned employers from, as a condition of employment, entering into arbitration agreements for claims brought under the Fair Employment and Housing Act and the Labor Code.

Coalition Challenge

The CalChamber led a large coalition of employers in challenging the law, arguing that AB 51 conflicted with federal law. After considering all briefing, Judge Mueller granted plaintiffs' motion for a preliminary injunction in full.

Of particular concern to employers were provisions of the law that placed on employers the extraordinary burden of criminal penalties punishable by imprisonment and fines.

CalChamber President and CEO Allan Zaremberg pointed out that the arbitration agreements AB 51 attempts to ban have long been favored by California and

See U.S. Court invalidates: Page 4

First Entries on 2020 Job Killer List Similar to Previous Failed Proposals



This week, the California Chamber of Commerce named two recently introduced bills as 2020 job killers.

The bills are very similar to prior versions also identified as job killers and stopped in the legislative process given the significant policy concerns raised.

- **SB 850 (Leyva; D-Chino)** is a mandated scheduling requirement. It eliminates worker flexibility and exposes employers to costly penalties, litigation, and government enforcement, by mandating employers in the retail, grocery, or restaurant industry, including employers who have hybrid operations that include a retail or restaurant section, to provide a 21-day work schedule and then face penalties and litigation if the employer changes the schedule with less than 7 days notice.

- **SB 873 (Jackson; D-Santa Barbara)** will lead to increased litigation. It exposes businesses to costly litigation for a consumer's assertion that any price difference on "substantially similar" goods, even a nominal amount, is based on gender and therefore the consumer is entitled to a minimum of \$4,000.

SB 850: Mandated Scheduling

The CalChamber has identified SB 850 as a job killer because it will elimi-

See First Entries: Page 6

2020 Issues Guide Available on Website



The California Chamber of Commerce **2020 Business Issues and Legislative Guide** is available now on the CalChamber website at www.calchamber.com/businessissues.

This easy-to-reference publication presents ways to make California a better place in which to live, work and do business.

To work toward keeping the **California Promise: Opportunity for All**, the state should pursue: steps to moderate the supply-induced housing affordability squeeze and improve high-way and transit capacity; developing in-state energy sources to moderate rapid growth in energy costs; and maintain-

ing fiscal discipline in anticipation of an eventual economic downturn.

Hard copies of the **Guide** are being mailed to CalChamber preferred and executive members who receive printed copies of **Alert** or who signed up to receive the hard copy **Guide**.

Additional hard copies are available for purchase (\$20 each). Mail checks to California Chamber of Commerce, P.O. Box 1736, Sacramento, CA 95812-1736, Attn: Business Issues.

An e-book edition of the **Guide**, compatible with smartphones, tablets and desktop computers with an e-book reader installed, can be downloaded free at www.calchamber.com/businessissues. A PDF file also is available.

In addition, issue articles can be viewed as web pages and downloaded as individual PDF files.

Inside

[Job Killer Bill Moves to Senate: Page 5](#)

Cal/OSHA Corner

Changes Brewing in Safety/Health Rules Due to Conformity Mandate



Mel Davis
Cal/OSHA Adviser

I hear there is a new law revising what is considered a serious injury and the requirements for complaint investigations. What are the changes?

As you know, California's occupational safety and health program must be at least as effective as that of the federal Occupational Safety and Health Administration (OSHA).

Legislation signed into law last August revises the Labor Code to be consistent with federal OSHA for injury reporting and complaints, and also makes changes so that other sections are consistent with state law adopted in 2010.

The new law—AB 1805; Committee on Labor and Employment, Chapter 200; Statutes of 2019—revises Labor Code sections 6302(h) and (i) to broaden the scope of injuries considered “serious.”

State occupational safety and health rules (not yet revised—see below) include the definition of “serious injury or illness” in the Director of Industrial Relations regulations—Title 8, Section 330.

Also revised by the new law was Labor Code Section 6309(a), which delineates Cal/OSHA's mandates and requirements for complaint investigations.

The change in Labor Code Section 6302(h) matches the federal regulation. The changes to Labor Code sections 6302(i) and 6309(a) create consistency with the previously adopted state

law (AB 2774; Swanson; D-Alameda; Chapter 692; Statutes of 2010).

‘Serious’ Injuries/Exposure

The revised definition of “serious injury or illness” in Section 6302(h) requires an employer to report *all* hospitalizations except that for observation or diagnostic testing. (The previous requirement was to report a hospitalization of more than 24 hours.)

The loss of an eye is now a qualifying injury, and “amputation” replaces the term “loss of a body member.”

Injury, illness or death caused by an accident on a public street or highway is exempt unless the accident happens in a construction zone. The reporting exemption/exclusion for incidents related to violations of the Penal Code has been deleted.

In Section 6302(i), “serious exposure” deals with the exposure of an employee to a hazardous substance. The exposure must be reported if there is a “realistic

See Changes Brewing: Page 7

California Chamber Officers

Mark Jansen
Chair

Donna L. Lucas
First Vice Chair

Kailesh Karavadra
Second Vice Chair

Gregory S. Bielli
Third Vice Chair

Grace Evans Cherashore
Immediate Past Chair

Allan Zaremborg
President and Chief Executive Officer

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 Amioika. Associate Editor: Taryn DeOilers. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffitt.

Permission granted to reprint articles if credit is given to the California Chamber of Commerce Alert, citing original publication date of article, and reprint is mailed to Alert at address above.

*Email: alert@calchamber.com.
Home page: www.calchamber.com.*

CalChamber-Sponsored Seminars/Trade Shows

More at www.calchamber.com/events.

Labor Law

Starting Off on the Right Foot—Keys to Employee Recruitment. CalChamber. February 20, Webinar. (800) 331-8877.
Leaves of Absence: Making Sense of It All. CalChamber. February 21, Sacramento; April 24, Costa Mesa; June 26, San Diego; August 13, Oakland. (800) 331-8877.

HR Boot Camp. CalChamber. March 5, Modesto; March 27, San Diego; April 23, Costa Mesa; May 6, Sacramento; June 12, Walnut Creek; August 21, Pasadena; September 10, Sacramento. (800) 331-8877.

International Trade

CSU Alumni Reception. The California State University. February 10, Seoul, South Korea; February 13, Tokyo, Japan. (562) 951-4717.
StopFakes Roadshow. International Trade Administration. February 11, Sacramento; February 13, San Jose. (916) 566-7170.
UAE Food Security Mission. United States-United Arab Emirates Business Council. February 16–20,

Dubai, United Arab Emirates.
+971-4-3321000.

Exporting Mechanics Webinar Series II: Drop Shipments and Routed Transactions. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. February 18, Webinar. (202) 466-0222.
U.S. Commercial Service Cybersecurity Global Chat. U.S. Commercial Service. February 25–27, San Francisco. (415) 517-0265.

Israel-USA Business Summit. Israel-America Chamber of Commerce, U.S. Chamber of Commerce, Federation of Israeli Chambers of Commerce, U.S. Commercial Service and SelectUSA. February 26, Tel Aviv, Israel. +972-544370124.

The 51st General Assembly of the World Trade Centers Association. World Trade Center Taipei. March 1–4, Taipei, Taiwan. (212) 432-2626.

International Trade Luncheon with Consul General of Mexico Remedios Gómez Arnau. Hayward Chamber of Commerce. March 5, Hayward. (510) 537-2424.

See CalChamber-Sponsored: Page 3



The Workplace

Super Bowl Flu, Gambling and Red Carpet Reviews: The Impact of Cultural Events in the Workplace



In Episode 47 of The Workplace podcast, CalChamber Executive Vice President and General Counsel Erika Frank and employment law

expert Jennifer Shaw discuss the ways in which cultural events like the Super Bowl and the Academy Awards can create potential issues and affect productivity at work.

Super Bowl Flu

One possible issue created by the Super Bowl being on a Sunday is absenteeism following the big game. While planned absences are easier to deal with, unplanned absences can create havoc.

Shaw and Frank advise employers to anticipate additional absences after the Super Bowl, not only due to the fact that workers may be recovering from effects of the big game, but also because it is cold and flu season.

Sick leave is a benefit nearly all employers are required to provide, so when employees use it, it is important that the boss does not question the reason for the illness nor dwell on it, Shaw says.

Workplace Gambling

Gambling by employees at work—which often occurs during football season and March Madness—can be a big issue in the workplace. What employers often miss is that gambling not only slows productivity, but also creates drama when people do not or cannot pay what they owe. Believe it or not, people have gone to their HR departments to ask if the company can take gambling debt out of an employee’s paycheck, comments Shaw.

According to Frank and Shaw, many employers are hesitant to forbid workplace betting. However, both attorneys point out that workplace gambling is illegal and it shouldn’t be happening. They agree that the best approach is to take action up front by ensuring a company’s ethics policy reflects the fact that gambling at work is unacceptable.

Reviews of the Halftime Show

This year’s Super Bowl halftime show generated some controversy on the appropriateness of costumes worn. Shaw and Frank warn that jokes and comments related to the performers or their appearance, for example, can lead to trouble.

“There are a lot of issues there; not

only could it be harassment-related issues, but discrimination-related issues or issues related to national origin, all of which are protected classes in California,” Frank says.

Academy Awards

The Oscars also can generate chatter that might be unwelcome in the workplace, according to Frank. What happens on the red carpet and during the awards show seems to find its way into the workplace, and often it is all in good fun. However, discussions about political viewpoints, sexism and physical appearance are out of bounds.

“It’s a distraction that gets people off of work, but more importantly has a personal element where people get very connected to their views,” Shaw says. Employees should be encouraged to respect the views of all and stay away from hot button issues or commenting on people’s appearance.

Subscribe to The Workplace

Subscribe to The Workplace on [iTunes](#), [Google Play](#), [Stitcher](#), [PodBean](#) and [Tune In](#).

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

CalChamber-Sponsored Seminars/Trade Shows

From Page 2

- Exporting Mechanics Webinar Series II: Cultural Sensitivity Program. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. March 10, Webinar. (202) 466-0222.
- CosmoProf Bologna. CosmoProf Worldwide Bologna. March 12–15, Bologna, Italy. +39-02-454708236.
- Access Asia: U.S. Department of Commerce, International Trade Administration. March 23–March 26, Sacramento, San Francisco, Oakland, Silicon Valley. Email george.tastard@trade.gov.
- 2nd Medical Device Research & Development Summit. March 23–24, Tel Aviv, Israel. +972-3-5626090, ext. 3.
- FIDAE 2020 (Aerospace/Defense Trade Show in Latin America). Governor’s Office of Business and Economic Development (GO-Biz)/U.S. Commer-

- cial Service. March 31–April 5, Pudahuel, Chile. +56-2-2976-9502.
- Exporting Mechanics Webinar Series II: ACE Export Reports for Compliance. National Customs Brokers & Forwarders Association of America, Inc. and U.S. Department of Commerce. April 14, Webinar. (202) 466-0222.
- Mission & Business Forum: Indo-Pacific Business Opportunities. U.S. Commercial Service. April 20–27, Hong Kong. (410) 962-3097.
- Hannover Messe Trade Fair. Deutsche Messe. April 20–24, Hannover, Germany. +49-511-890.
- 94th Annual World Trade Week. Los Angeles Area Chamber of Commerce. May 5, Los Angeles. (213) 580-7500.
- 2020 Annual Export Conference. National Association of District Export Councils. May 19–20, Alexandria, Virginia. (407) 255-9824.

- Women’s Global Trade Empowerment Forum. U.S. Commercial Service. May 27–28, Dallas, Texas. (769) 610-1644.
- 2020 SelectUSA Investment Summit. International Trade Administration. June 1–3, Washington, D.C. (800) 424-5249.
- Construction Indonesia 2020. PT Pamerindo Indonesia and Informa Markets. September 16–18, Jakarta, Indonesia. +49-3999905-0.

CalChamber Calendar

- Board of Directors:*
February 27–28, La Jolla.
- Capitol Summit:*
June 3, Sacramento
- Host Breakfast:*
June 4, Sacramento

Two CalChamber-Opposed Housing Bills Fail to Move Before Deadline



OPPOSE

Two California Chamber of Commerce-**opposed** bills that would have worsened the state's housing shortage have failed to move.

Both bills missed the January 31 deadline for all 2019 bills to pass the house in which they were introduced.

AB 36

AB 36 (Bloom; D-Santa Monica), a CalChamber job killer bill, would have worsened California's housing shortage by modifying the Costa-Hawkins Rental Housing Act to allow cities to enact or expand rent control to residential properties only 10 years old.

Moreover, the bill conflicted with California voters' overwhelming rejection of the rent control initiative on the November 2018 ballot, Proposition 10.

Economic research and a report by the

nonpartisan Legislative Analyst's Office concludes that rent control depresses new residential construction, decreases affordability of most units, encourages gentrification and creates spillover effects into surrounding neighborhoods.

AB 36 purported to make housing more affordable without actually increasing the overall supply of housing. The bill does not address the underlying cause of California's high housing costs—a severe housing shortage—and exacerbates an already-constrained housing market that desperately needs policies that incentivize more home building, not less.

The CalChamber also opposed AB 36 because it would have hurt employers already facing increasing shortages of workers as more and more skilled labor leaves California in search of more affordable housing.

SB 529

The second bill, **SB 529 (Durazo; D-Los Angeles)**, would have had a negative impact on landlords and deterred new housing development. The bill also would

have increased litigation by allowing tenants to form tenant associations and then withhold rent based on any alleged undefined grievances that the tenant has with the landlord, thereby forcing landlords to litigate even the most minor of grievances.

State and local laws already have adopted penalties and processes through which tenants can lodge a complaint and seek corrections to their housing situations, including through local housing departments, local housing inspectors, local mediation programs, local rent boards and the courts, rendering this bill unnecessary.

California law has some of the strongest protections in place for tenants who face retaliatory or discriminatory evictions. Failure to abide by these laws carries significant penalties, including actual damages, injunctive relief, and punitive damages.

Still, SB 529 would have required property owners to list a specific cause if they wish to evict a tenant who is a member of a tenants' association. This requirement would lead to significantly

See Two CalChamber-Opposed: Page 5

U.S. Court Invalidates Anti-Arbitration Law

From Page 1

federal law, and have been consistently upheld by the courts.

"We are pleased the court recognized the fact that placing businesses at risk for criminal penalties for a practice that has long been supported both by California and federal law was excessive," said Zaremborg.

"While it may not serve the best interests of the trial lawyers, expeditious resolution through the arbitration process serves the interests of employees and employers."

The CalChamber and the employer coalition filed their initial motion to invalidate and stop enforcement of AB 51 on December 6, 2019.

On December 30, 2019, Judge Mueller issued a temporary restraining order, halting enforcement of AB 51 until the matter could be resolved.

Benefits of Arbitration

As pointed out in the initial complaint filed against AB 51, businesses routinely enter into arbitration agreements with workers, either as a condition of employment or on an opt-out basis, so that both parties can make use of alternative

dispute resolution procedures.

The U.S. Supreme Court, the complaint states, observed in *Circuit City Stores, Inc. v. Adams*, "there are real benefits to the enforcement of arbitration provisions. ... Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts."

The complaint points out that arbitration provides workers with a fair and effective means of resolving their disputes:

- **Arbitration procedures are fair**—the vast majority of agreements and the leading arbitration providers require fair procedures. If an arbitration agreement prescribes unfair procedures, courts can and will refuse to enforce the agreement.

- **Arbitration offers workers simple procedures** that they can navigate even without a lawyer. That simplicity matters because many workers who have disputes are unable to secure legal representation, and their inability to obtain a lawyer creates insurmountable obstacles to bringing claims in court.

- **Arbitration is faster than litigation in court.** As a recent study released by the U.S. Chamber's Institute for Legal Reform found, arbitration cases in which the employee brought the claim and prevailed took, on average, 569 days to complete, while cases in court required an average of 665 days.

Moreover, employees did better in arbitration than in court—in cases decided by an arbitrator or court (rather than settled), employees who filed claims won three times as often in arbitration—32% compared to 11%—and recovered an average award of \$520,630 in arbitration compared to \$269,885 in court.

- **Arbitration also lowers the costs of dispute resolution**, which creates savings that in part can be passed on to workers through higher wages and consumers through lower prices.

More Information

To view legal documents in the case, *Chamber of Commerce of the United States of America et al. v. Becerra et al.*, go to www.calchamber.com/legalaffairs and click on "CalChamber in Court" in the dropdown menu.

Job Killer Bill Forcing Greater Reliance on Foreign Oil Advances to Senate



A California Chamber of Commerce-**opposed** job killer bill that will increase prices and the need to import foreign oil advanced from the Assembly to the Senate

last week.

The CalChamber labeled **AB 345 (Muratsuchi; D-Torrance)** a job killer because it threatens to eliminate thousands of high-paying California jobs, result in California importing even more foreign oil, and raise oil and gas prices.

Arbitrary Setbacks

AB 345 requires the California Geologic Energy Management Division (CalGEM) to adopt regulations with predisposed setback requirements for new and existing oil and gas wells.

CalGEM announced in November 2019 a series of initiatives and formal rulemaking to safeguard public health and the environment, as well as advance California's goal to become carbon-neutral by 2045.

The actions include a rulemaking process considering the best available science and data to inform any new protective requirements. It will involve consulting with environmental and public health advocates, as well as public health authorities, including the California Department of Public Health, the California Environmental Protection Agency, and other health experts.

AB 345 puts the cart before the horse by requiring CalGEM to adopt regulations

likely requiring the exact same 2,500 feet minimum setback requirements that existed in the prior versions of the bill, politicizing the rulemaking by predisposing an outcome before an analysis has even begun.

By pre-determining arbitrary setback requirements before the agency analyzes safety requirements during formal rulemaking, AB 345 undermines the state agency responsible for managing oil and gas operations in a way that would likely lead to significant and unnecessary cost increases for all Californians.

Reliance on Foreign Oil

Although intended to help California reach its environmental goals, AB 345 would achieve the opposite. The bill does nothing to reduce California's oil and gas energy demands—it merely drives production out of California and forces the state to rely on even more foreign oil imports.

According to the California Energy Commission, California is relying more on foreign oil than at any time since the agency started tracking the sources of crude oil used in 1982.

In 2018, California imported 370 million barrels, or 57% of the state's crude oil supply, from foreign nations like Saudi Arabia (37%), Colombia (13%) and Iraq (8%).

In 1992, California imported just 33 million barrels, or 5% of its supply.

Banning in-state oil and gas production—in a state with the most stringent environmental regulations in the world—only to shift suppliers to foreign oil

regimes with abysmal environmental and labor protections fails to address climate change. The ban merely trades greenhouse gas emissions in California for greenhouse gas emissions elsewhere.

Imperils Thousands of Jobs

Should the arbitrary minimum setback requirements prescribed in AB 345 be adopted, approximately 87% of all oil and gas wells in the City of Los Angeles and 66% of all oil and gas wells in Los Angeles County would shut down. The shutdowns could eliminate approximately 6,000 high-wage jobs in Los Angeles County alone.

Moreover, the Assembly Appropriations Committee estimated that AB 345's setback requirements could cost California up to \$4 billion in lost state revenue and subject the state to significant legal liability under the takings clause of the U.S. Constitution.

AB 345 passed the Assembly on January 27 on a 42-30 vote with 8 abstentions. The bill awaits assignment to a committee in the Senate.

Staff Contact: Adam Regele

Two CalChamber- Opposed Housing Bills Fail to Move Before Deadline

From Page 4

higher rents and would place good tenants in danger by making it much more difficult for landlords to remove bad tenants engaged in illegal or nuisance activity.

Housing Crisis

California's housing crisis is driving many residents and businesses out of state and discouraging new investments from coming in. The CalChamber supports comprehensive reform of environmental and zoning laws, which is necessary to remove obstacles that hamper housing construction and increase new home prices.

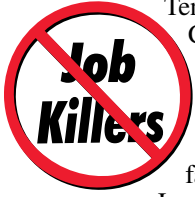
Staff Contact: Adam Regele


CALIFORNIA CHAMBER OF COMMERCE

CAPITOL SUMMIT & SACRAMENTO HOST BREAKFAST

JUNE 3-4, 2020

Job Killer Carryover Bills Miss Deadline to Move



Ten California Chamber of Commerce-**opposed** job killer bills introduced last year have been stopped.

The following bills failed to move before the January 31 deadline for all 2019 bills to pass the house in which they were introduced:

- **AB 36 (Bloom; D-Santa Monica):** Defies the will of the voters and worsens California’s housing shortage by modifying the Costa-Hawkins Rental Housing Act to allow cities to enact or expand rent control to residential properties constructed within 10 years of the date upon which the owner seeks to establish the initial or subsequent rental rate, which will discourage housing production, quality of housing, and impact low-income individuals and families.

- **AB 288 (Cunningham; R-San Luis Obispo):** Creates an onerous private right of action with a right to excessive punitive damages for purely economic losses at a low evidentiary standard, along with attorney’s fees, for a new consumer right to delete data that conflicts with the consumer right to delete recently provided by the California Consumer Privacy Act.

- **AB 495 (Muratsuchi; D-Torrance):** Bypasses a legislatively mandated analytical process to judge the safety of

consumer products and seeks to prohibit safe cosmetic products based upon the mere presence of a chemical in the product, no matter the level, that will lead to potential regrettable substitutions and job losses in the cosmetic industry.

- **AB 628 (Bonta; D-Oakland):** Significantly expands the definition of sexual harassment under the Labor Code, which is different than the definition in the Government Code, leading to inconsistent implementation of anti-harassment policies, confusion, and litigation. Also, provides an unprecedented, uncapped leave of absence for alleged victims of sexual harassment and their “family members.”

- **AB 882 (McCarty; D-Sacramento):** Undermines an employer’s ability to provide a safe and drug-free workplace and potentially encompasses medical marijuana in the workplace, which voters have already rejected.

- **AB 1332 (Bonta; D-Oakland):** Prohibits California public entities from contracting with, or investing in, any business that provides data-related services to an undefined group of federal agencies. Will create litigation and uncertainty for businesses that continue to work with California public entities, as the bill provides no clear guidance on how to comply with terms, and also in limited circumstances, compels public entities to breach signed contracts.

- **SB 246 (Wieckowski; D-Fremont):**

Unfairly targets one industry by imposing a 10% oil and gas severance tax onto an oil and gas operator, adding another layer of taxes onto this industry that will significantly increase the costs of doing business, thereby increasing prices paid by consumers for goods and services in this expensive state as well.

- **SB 320 (Jackson; D-Santa Barbara):** Exposes businesses to costly litigation for a consumer’s assertion that any price difference on “substantially similar” goods, even a nominal amount, is based on gender and therefore the consumer is entitled to a minimum of \$4,000.

- **SB 561 (Jackson; D-Santa Barbara):** Creates an onerous and costly private right of action that will primarily benefit trial lawyers, allowing them to sue for any violations of the California Consumer Privacy Act (CCPA), and removes businesses’ 30-day right to cure an alleged violation of the CCPA as well as businesses’ ability to seek guidance from the Attorney General on how to comply with this confusing and complex law.

- **SB 567 (Caballero; D-Salinas):** Significantly increases workers’ compensation costs for public and private hospitals by presuming certain diseases and injuries for specified hospital employees are caused by the workplace and establishes an extremely concerning precedent for expanding presumptions into the private sector.

First Entries on 2020 Job Killer List Similar to Previous Failed Proposals

From Page 1

nate flexibility in the workplace for both employers and employees, deny employees the opportunity to work additional hours if desired, limit employers’ ability to accommodate customer demands, and subject employers to unnecessary layers of penalties, investigative actions and costly litigation.

The bill is significantly broader than other local ordinances—such as those in San Francisco, Emeryville and Berkeley—that already have limited flexibility for businesses and employees.

SB 850 applies to large and small employers, as well as those who do not engage primarily in selling merchandise or food.

Similar legislation was held on the Senate Appropriations Committee Suspend File in 2016 (SB 878; Leyva; D-Chino).

SB 873: Increased Litigation

The CalChamber has identified SB 873 as a job killer because it includes a private right of action with a minimum of \$4,000 in damages per alleged violation, which will expose small and large businesses to a flurry of costly litigation for claims that two products are substantially similar, even though they may be different, and that any price differential is based on gender, when it is actually based upon legitimate non-gender-related reasons.

The litigation exposure is similar to the construction disability access litigation that has plagued California businesses.

Moreover, in an effort to comply with SB 873, businesses will be forced to engage in gender stereotyping based on traditional social expectations that scholars have urged businesses to avoid.

The bill also will lead to the elimination of discounts, coupons or sales, thereby potentially costing consumers more.

Similar legislation failed to pass the Senate Judiciary Committee in 2019 (SB 320; Jackson; D-Santa Barbara).
Staff Contacts: Laura Curtis, Jennifer Barrera

Legislative Analyst: Rely More on Most Cost-Effective Climate Strategies



Relying more on the most cost-effective greenhouse gas (GHG) reduction strategies was

recommended last month by the California Legislative Analyst's Office (LAO).

In its annual report on California's climate policies, the LAO, the California Legislature's nonpartisan fiscal and policy adviser, recommended: "In the future, the Legislature might want to rely more heavily on the most cost-effective programs, such as cap-and-trade."

The Legislature should heed this advice to meet the state's ambitious GHG goals while avoiding increases in California's already highest-in-the-nation cost of living. After all, California cannot solve the climate crisis alone; if it is to serve as a model for emissions reductions AND economic growth to be adopted by other jurisdictions across the globe, it must demonstrate that costs can be contained.

Policy Review

The report, "Assessing California's Climate Policies—Electricity Generation," analyzed major policies to reduce electricity sector emissions, including the Renewable Portfolio Standard (RPS), which requires California's electricity providers to procure a percentage of power from certain defined renewable resources, the California Solar Initiative (CSI) (distributed solar), Net Energy Metering (NEM) (rooftop solar), emissions performance standards, and cap-and-trade.

The LAO report is released annually, as required by AB 398 (E. Garcia; D-Coachella; 2017), which was a bipartisan, California Chamber of Commerce-supported bill to reauthorize the use of

California's cap-and-trade program.

The Legislative Analyst also provided the following topics as "Key Issues for Legislative Consideration":

- Comprehensive Policy Evaluations Lacking;
- Mix of Policies Likely Not Most Cost-Effective Way to Reduce GHGs; and
- High Electricity Rates Could Be a Barrier to GHG Reductions.

Cost-Effectiveness

The LAO analysis supports CalChamber's position that cost-effectiveness in GHG reductions must continue to be a focus. It states that there are substantial differences in the price per ton of GHG emissions under this suite of policies, from \$150–\$200/ton on average for distributed solar to marginal costs of \$20/ton under cap-and-trade.

According to the report, the RPS program was a significant driver of reductions at a direct cost of \$1 billion annually, rooftop solar is generally more costly, and "much more costly than utility-scale solar." The CSI program had significantly higher costs than the RPS, and NEM results in significant cost shifts from solar customers to noncustomers.

Cap-and-Trade

The report states that cap-and-trade is a significantly more cost-effective program than many others and that such programs should be given priority consideration.

As the reader likely already knows, cap-and-trade is a market-based system that "caps" overall emissions, effectively creating a carbon pricing structure to drive down carbon emissions. Proceeds from auctions of units of carbon emission are then used by California to fund other emission reduction programs.

Last year, the Legislature approved a \$1.04 billion spending plan to reduce GHG and improve air quality, all funded by cap-and-trade. This year, cap-and-trade is expected to generate approximately **\$2.573 billion** in funding.

Influential Factors

With respect to comprehensive policy evaluations, the report suggests that while the state policies are likely a substantial driver of reductions, a wide variety of other factors likely had a significant influence, such as declines in the price of natural gas and renewables, federal policies, voluntary purchases of "green" electricity, and the closing of the San Onofre nuclear plant, the latter of which actually increased overall emissions when this zero-emission resource was taken offline.

Overall, the LAO report suggests that the Legislature continue to study the actual emission reductions of all policies, which are currently difficult to measure, as California moves toward its 2030 goals.

Most evident is that before additional policy decisions are made, the Legislature should ensure that GHG reductions are done in a reasonable, cost-effective manner, and ensure that costs are not simply shifted from one ratepayer group to another.

Market-based approaches to GHG reductions appear to be the most cost-effective method to date, and all policies should continue to be studied and evaluated to ensure a robust policy mix that ensures reliability while keeping rates low. As the LAO report emphasized, reliance on cost-effective programs is key.

Story adapted from the Capitol Insider blog post.

Staff Contact: Leah Silverthorn

Changes Brewing in Safety/Health Rules Due to Conformity Mandate

From Page 2

possibility" (formerly "substantial probability") of death or serious physical harm in the future.

Section 6309(a) also substitutes the term "realistic possibility" for "substantial probability" for evaluating and determining the seriousness and response time of a complaint.

Rulemaking Yet to Begin

Because these legislative mandates

were signed into law in August 2019, the California Division of Occupational Safety and Health (Cal/OSHA) has not had enough time to evaluate and develop rulemaking to be adopted into Title 8 for normal enforcement.

If a serious or unique situation arises, however, Cal/OSHA could write a special order to an employer referencing the applicable Labor Code.

If you are affected by these amendments, it is recommended that you period-

ically check the Department of Industrial Relations and Cal/OSHA websites to monitor the rulemaking process.

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.

All-New Mandatory California Harassment Prevention Training

CalChamber helps you recognize the fine lines of harassment in our brand-new supervisor and employee courses for 2020:

- Engaging movie-quality videos and contemporary scenes
- Real workplace situations include not-so-obvious behaviors
- Commentary from CalChamber employment law experts
- New interactions and quizzes to test learner knowledge

Save 20% or more now on mandatory California harassment prevention training seats you purchase through March 31, 2020. Preferred/Executive members receive their 20% member discount on top of the 20% savings.



Engaging Movie-Quality Videos | Expert Commentary

BUY NOW at calchamber.com/newhpt or call (800) 331-8877. Priority Code AHPT

ADDRESS SERVICE REQUESTED

HR Expert & Business Advocate™

www.calchamber.com
(916) 444-6670 FACSIMILE (916) 444-6685
P.O. BOX 1736 SACRAMENTO, CA 95812-1736

CALIFORNIA CHAMBER OF COMMERCE

ALERT

Periodicals
Postage
PAID
Sacramento, CA