

ALERT

New Job Killer Bill Passes Senate Policy Committee

Allows Employees to Refuse to Show Up for Work



A newly identified California Chamber of Commerce **job killer** bill that is opposed by more than 60 organizations passed the Senate Labor, Public

Employment and Retirement Committee on March 21.

The bill, **SB 1044 (Durazo; D-Los Angeles)**, allows employees to leave work or refuse to show up to work if the employee subjectively feels unsafe

regardless of existing health and safety standards or whether the employer has provided health and safety protections, and subjects employers to costly Private Attorneys General Act (PAGA) lawsuits if they dispute the employee's decision or need to have another employee take over any job duties.

CalChamber Letter

In a letter submitted to the bill's author on March 21, the CalChamber
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Privacy Attorney Joins CalChamber Policy Team



Ronak Daylami

Ronak Daylami, an experienced attorney, has joined the California Chamber of Commerce as a policy advocate specializing in privacy issues.

She came to the CalChamber policy team from Nielsen Merksamer, where

she served as senior counsel in the firm's government law section specializing in privacy issues, state regulation of business practices, consumer protection, and legislative process.

Before joining Nielsen Merksamer, Daylami worked for nearly 10 years in the Capitol. Most recently, she was the chief consultant of the Assembly Privacy and Consumer Protection Committee, where she provided expertise on privacy, cybersecurity, consumer protection, and deployment of technology by state government.

As chief consultant, she provided counsel to Committee Chairman and AB 375 joint author Assemblymember Ed Chau during the negotiations and passage of the California Consumer Privacy Act.

Daylami previously served as senior counsel to the Senate Judiciary Committee, where she worked for nearly six years on various high profile, complex, and controversial issues involv-

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CalChamber Reception for Japan's Ambassador Celebrates Partnership with Longtime Ally



At a CalChamber-hosted reception on March 21 honoring the Japanese ambassador and celebrating the longtime relationship between California and Japan are (from left) California Lieutenant Governor Eleni Kounalakis; Hiroshi Kawamura, Consul General of Japan in San Francisco; Japanese Ambassador Koji Tomita; CalChamber President and CEO Jennifer Barrera; Dee Dee Myers, Director, Governor's Office of Business and Economic Development (GO-Biz). *See story on Page 6.*

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Labor Law Corner

Harassment Outside of Work? Employer Still Must Respond to Complaint



Matthew J. Roberts
Labor Law Helpline
Manager

One of my supervisors just reported to me that they received complaints about harassment from a coworker but did not report them to us because the conduct occurred after work hours and the employees did not want to file “formal” complaints. Is there anything more we have to do at this point?

Situations like these often are confusing for employers and can lead to significant exposure to liability due to the employer’s strict obligations under the law to prevent harassment and discrimination in the workplace.

This is due in large part to a misunderstanding about when and where an employer may intervene in conduct that occurs away from the workplace during nonworking hours.

State Law Requirements

To start, employers should know how California’s anti-harassment law, the Fair Employment and Housing Act (FEHA), directs employers to respond to employee complaints.

Under the FEHA, employers who learn of potential unlawful harassment, discrimination or retaliation must conduct a prompt, impartial and thorough investigation into the complaint.

Further, under the FEHA, a supervisor’s conduct may create strict liability for employers for FEHA violations regardless of whether the employer was aware of that supervisor’s conduct — including when the supervisor is either the harasser or receives complaints of harassment from employees but fails to act on them.

For a supervisor, it may be common knowledge to report an employee’s complaint that’s made during work hours to the appropriate manager in the organization. But other common issues may arise that, at first glance, aren’t so clear.

No ‘Off the Record’

One such commonly misunderstood situation is the “off-the-record” complaint — where the employee brings to their supervisor a workplace harassment issue, but then says they don’t want to “file a formal complaint.”

Employees often make this type of complaint because they’re concerned about negative reactions from either their alleged harasser or the employer. This can be confusing for supervisors, as they want to respect their employees’ wishes.

But if the supervisor chooses not to report the complaint because the employee didn’t want to pursue it further, this can result in liability for the employer — because there’s no such thing as an “off-the-record” complaint.

If an employee raises a harassment issue, the supervisor must report it to the appropriate person within the organization. This also holds true when either a third party raises the complaint on behalf of another employee or the supervisor witnesses harassing conduct, but no one complains.

Conduct Outside of Work

Similar to the off-the-record complaints, responding to complaints

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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.

Send email address changes to alert@calchamber.com. Publisher: Jennifer Barrera. Executive Editor: Ann Amioka. Art Director: Neil Ishikawa. Capitol Correspondent: Sara Proffit.

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Labor and Employment

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. April 14–15, June 9–10, Online. (800) 331-8877.

Covering the Bases: California Wage and Hour Compliance. CalChamber. April 21, Webinar. (800) 331-8877.

HR Boot Camp Virtual Seminar. CalChamber. May 5–6, May 26–27, June 23–24, Online. (800) 331-8877.

International Trade

Maritime Transportation Data Initiative Hearings. Federal Maritime Commission. March 29, Marine Terminal Operators; April 5, Marine Terminal Operators; April 12, Carriers (1); April 19, Carriers (2); Online. (202) 523-5725.

Trade Mission to Central America 2022. U.S. Commercial Service. March 27–28, Guatemala. (800) 872-8723.

Expo Dubai 2021. Expo 2020 Dubai UAE. Through March 31, 2022, Dubai, United Arab Emirates. (+971) 800 EXPO (3976).
2022 Taiwan Trade Shows. Taiwan External Trade Development Council. Through October 30, Online and In-Person. +886-2-2725-5200.
Cybersecurity Business Development Mission to South America. U.S. Department of Commerce, International Trade Administration. April 5–8, Uruguay, Chile, Peru. (800) 872-8723.
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30th Annual Africa and Diaspora International Conference. Center for African Peace and Conflict Resolution, California State University, Sacramento. April 28–30, Sacramento. (916) 278-6282.

CalChamber Board Dinner Brings Together Women Leaders



In recognition of Women's History Month, women leaders attending the CalChamber Board of Directors dinner on March 10 gather for a photo. Standing (from left) Diana Davis, general manager, Toyota Motor North America; Susan Savage, CEO, Sacramento River Cats; Sima Patel, CEO, Ridgemont Hospitality; CalChamber President and CEO Jennifer Barrera; Ariel Roblin, president and general manager, KCRA-TV; Donna Lucas, president and CEO, Lucas Public Affairs; Diane Miller, president, Wilcox, Miller & Nelson; Kerry Tullis Hattevik, president, Trans Bay Cable LLC; Jennifer Haley, president, Kern Oil & Refining Co.; Lisa Daniels, managing partner, KPMG LLP. Kneeling (from left) Fiona Hutton, founder and CEO, Fiona Hutton & Associates; Margaret Wong, president and CEO, McWong International, Inc.; Grace Evans Cherashore, executive chairwoman, Evans Hotels; Janet Liang, group president and chief operating officer, care delivery, Kaiser Foundation Health Plan, Inc. and Hospitals. See the names of all the women on the CalChamber Board and past women CalChamber Board chairs at [this link](#).

Harassment Outside of Work? Employer Still Must Respond to Complaint

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about conduct that occurred away from the worksite and/or after hours can be confusing. After all, employers have little control over employees who aren't working or at the worksite.

If a supervisor receives a complaint about conduct that occurred between two employees offsite or after hours, however, the supervisor must report that complaint as well.

The FEHA requires employers to take steps to prevent harassment in the workplace. If an employee is harassing a coworker outside of the workplace, that can contribute to a hostile work environ-

ment and must be addressed — or the employer risks violating the FEHA.

Ultimately, an employer may be liable for hostile work environment claims if a supervisor fails to report these types of complaints and the employer took no action to address the conduct.

Supervisor Training

Due to the strict requirements under the FEHA, employers should be committed to providing comprehensive training to their supervisors that not only addresses the basics in workplace harassment prevention but also educates on these more complex and misunderstood concepts.

The CalChamber offers interactive online training that fulfills legal compliance obligations for both [supervisors](#) and [nonsupervisors](#), and includes cinema-quality videos based on real-life situations. For more information, visit the [CalChamber Store](#).

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 Member Feedback

"The CalChamber does an amazing job at bringing together many constituencies to collaborate on making the state a better place to live and work for our diverse, hard-working residents."

Grace Evans Cherashore
Executive Chairwoman
Evans Hotels

Appeals Court Sides with CalChamber in Prop. 65 Ruling on Acrylamide in Food



Last week, California businesses won another victory in the continuing debate over

whether the Proposition 65 warning requirement applies to acrylamide in food and beverage products.

In a [March 17 ruling](#), the Ninth Circuit U.S. Court of Appeals rejected an appeal from the Council for Education and Research on Toxics (CERT) and affirmed last year’s preliminary injunction barring the California Attorney General and anyone else from filing new lawsuits against businesses to enforce the Proposition 65 warning requirement for the presence of acrylamide in food and beverage products.

Acrylamide

The California Office of Environmental Health Hazard Assessment (OEHHA) added acrylamide to the Proposition 65 list of carcinogens in 1990, but acrylamide was not detected in foods until 2002.

Acrylamide is not intentionally added

to food products but instead is formed naturally as a result of cooking or heating certain foods, such as coffee, roasted nuts, and breads, to name a few.

The pervasive nature of acrylamide in everyday food and beverage products has made it an obvious target for Proposition 65 private enforcers, who have already collected millions of dollars in attorney fees and costs against businesses.

CalChamber Lawsuit

In October 2019, CalChamber filed its First Amendment [lawsuit](#) against the California Attorney General in federal district court, challenging as unconstitutional the Proposition 65 warning requirement for cancer as applied to acrylamide in food and beverage products.

The CalChamber filed an [amended complaint](#) on March 16, 2020 seeking a preliminary injunction prohibiting the Attorney General and private enforcers of Proposition 65 from filing or prosecuting new lawsuits to enforce the warning requirement for cancer as applied to acrylamide in food and beverage products.

The CalChamber argued that under the

U.S. Supreme Court decision in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), the State cannot compel commercial entities to disclose information about their products that is not “purely factual and uncontroversial.”

CalChamber’s epidemiologist and a toxicologist, as well as a key state scientist, provided expert testimony showing California does not know that acrylamide causes cancer in humans.

Appeals Court Ruling

A panel of Ninth Circuit judges upheld Chief U.S. District Judge Kimberly J. Mueller’s decision that the state had not carried its burden of showing that Proposition 65 warnings for acrylamide in food are purely factual and uncontroversial. The Ninth Circuit ruling pointed to robust disagreement by reputable scientific sources over whether acrylamide in food causes cancer in humans.

The Ninth Circuit ruling also upheld the district court’s conclusion that a Proposition 65 warning for acrylamide is misleading. The state of California,

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pointed out that SB 1044 would give license to essential workers to skip shifts without prior permission or planning, jeopardizing public safety.

Under the bill, any employer who disciplines an employee for failing to report to work due to a cited state of emergency, would be subject to a lawsuit and penalties under PAGA.

Additionally, the broad applicability of the bill raises safety concerns for other employees in the workplace because it does not require workers to consider the safety of others in their workplace.

Concerns

The CalChamber also identified other important concerns, including the fact that SB 1044:

- **Would cripple emergency response and actually reduce workplace safety.** SB 1044 contains no exceptions for essen-

tial services, such as health care workers, police or firefighters and would allow emergency response personnel to walk off the job, endangering public safety.

- **Broadly defines “state of emergency” to encompass states of emergency that are ongoing.** “State of emergency” is defined so broadly that it includes any state of emergency, local emergency, or presidential proclamation of major disaster or emergency caused by natural forces. This would encompass essentially every state of emergency. The bill also does not take into account what safety measures have been put in place by the employer.

- **Exposes employers to lawsuits under PAGA.** An employer who disciplines an employee for leaving the workplace would be subject to a lawsuit and penalties under PAGA. And any employer who replaces the worker in order to keep the workplace functioning or to provide time-sensitive services could face a retal-

iation lawsuit. In other words — SB 1044 gives such broad discretion to employees that if they walk away from a completely safe workplace, the employer could do little in response without risking litigation.

- **Is unnecessary because existing Cal/OSHA regulations and state and federal laws include substantial safety protections, provide employees the right to a safe workplace, and protect employees from retaliation if those laws are violated.**

Key Vote

SB 1044 passed Senate Labor, Public Employment and Retirement on a vote of 4-1.

Ayes: Cortese (D-San Jose), Durazo (D-Los Angeles), Laird (D-Santa Cruz), Newman (D-Fullerton).

No: Ochoa Bogh (R-Yucaipa).

SB 1044 will be considered next by the Senate Appropriations Committee.

Staff Contact: Ashley Hoffman

California Film & TV Tax Credit Program Generates \$21.9B in Economic Output, 110,000 Jobs Over Five Years



California's Film and Television Tax Credit Program contributed almost \$21.9

billion in economic output over five years and supported more than 110,000 total jobs in the state, according to a [new study released by the Los Angeles County Economic Development Corporation \(LAEDC\)](#).

\$24 Returned for Every \$1 Invested

The Film and Television Tax Credit Program 2.0, which ran from July 2015 through June 2020, allocated \$330 million per year in tax credits to fight “runaway production” and grow film/TV production-related employment and spending across the state.

The study findings show that for every tax credit dollar allocated, the state benefitted from at least \$24.40 in economic output, \$16.14 in gross domestic product (GDP), \$8.60 in wages and \$1.07 in state and local tax revenues.

The program also returned to state and local governments an estimated \$961.5 million in tax revenue.

“The success of this program is not only the jobs created and retained, but the economic engine it provides to other businesses throughout the region and the state,” said Dee Dee Myers, senior advisor to the Governor and director of the Office of Business and Economic Development.

“This LAEDC report reveals how much that means to California’s economy – and why we’re so committed to this critical industry here in our state.”

According to the Governor’s Office, projects that filmed in California under Program 2.0 include current Oscar-nominated films “Licorice Pizza,” “Being the Ricardos,” “Tragedy of Macbeth” and “King Richard,” which together generated \$82.7 million in wages to below-the-line workers and payments to vendors over a combined 174 filming days in California.

Other Program 2.0 projects include current and upcoming releases “Winning Time: The Rise of the Lakers Dynasty,” “The Dropout,” “Euphoria,” “Westworld” and “Top Gun: Maverick.” Earlier projects include “Captain Marvel,” “Space Jam 2,” “Birds of Prey,” “Bumblebee” and “A Star is Born.”

Program 3.0

The latest edition of California’s Film and Television Tax Credit Program (Program 3.0) started in July 2020 to continue and expand upon Program 2.0’s success. Despite launching during the pandemic, Program 3.0 is achieving its goals, as affirmed by the most recent round of film tax credit projects announced February 28, which are on track to generate nearly \$440 million in wages to below-the-line workers and payments to in-state vendors.

Beyond the financial impacts that are the focus of the LAEDC’s report, Program 3.0 delivers additional bene-

fits. For example, the California Film Commission’s Career Pathways Program, which is funded entirely by projects in the tax credit program, trains entry-level workers for a wide range of production-related jobs and is very effective at reducing the economic, geographic and social barriers to career success.

“California’s film and TV tax credit program is an investment in the industry and the thousands of people whose passion and vision create the content we all want to watch,” said Nancy Rae Stone, deputy director of the tax credit program. “Its career readiness requirement helps ensure a pipeline of emerging talent in the years ahead by providing paid internships, workshops and panels, while the Career Pathways Program provides hands-on training to individuals from underserved communities.”

Last year’s passage of Senate Bill 144 added \$75 million per year in funding (for two years) for recurring TV series and \$15 million per year (for two years) for relocating TV series. The bill, which Governor Gavin Newsom signed on July 21, 2021 with bipartisan support, also creates a separate tax credit program to incentivize the development of production infrastructure and help ensure the industry’s workforce reflects California’s diversity.

The California Film Commission will launch the California Soundstage Filming Tax Credit Program later this year as a new tool to expand film/TV production infrastructure and workforce inclusion.

Appeals Court Sides with CalChamber in Prop. 65 Ruling on Acrylamide

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the ruling stated, *does not* know if acrylamide causes cancer in humans.

According to the Ninth Circuit, the record supported the district court’s finding that the Proposition 65 enforcement regime created a heavy litigation burden on manufacturers that use alternative

warnings rather than the approved safe harbor warning in California’s health and safety regulations.

With the March 17 Ninth Circuit decision, future Proposition 65 litigation pertaining to acrylamide in food and beverage products will be blocked until the court issues a final ruling. The case

also may have major implications for other Proposition 65 listed chemicals.

For more information about the CalChamber lawsuit, please contact Heather Wallace, Vice President, Legal Affairs, or Adam Regele, Senior Policy Advocate.

Staff Contact: Adam Regele

CalChamber Hosts Reception for Japanese Ambassador, Celebrates Longtime Relations



CalChamber President and CEO Jennifer Barrera



Dee Dee Myers, Director, Governor's Office of Business and Economic Development (GO-Biz)



Lieutenant Governor Eleni Kounalakis



Koji Tomita, Ambassador of Japan to the U.S.



On Monday, March 21 the California Chamber of Commerce hosted a reception for the Japanese Ambassador to the United States.

Ambassador Koji Tomita was accompanied by a delegation including Hiroshi Kawamura, Consul General of Japan in San Francisco, and representatives from the business community together with California state government officials.

The Ambassador was escorted to the CalChamber offices by the Lieutenant Governor of California, Ambassador Eleni Kounalakis, and Dee Dee Myers, Director of the Governor's Office of Business and Economic Development (GO-Biz), following the signing of a Memorandum of Cooperation (MOC) on climate change and energy earlier in the day.

CalChamber President and CEO Jennifer Barrera welcomed the guests to the reception celebrating California's relationship with our partner and ally, Japan.

California has a long history of friendship with Japan, the state's No. 1 source of foreign direct investment and fourth largest export market.

The reception was the first in-person gathering at the CalChamber offices since the COVID-19 shutdown two years ago.

Memorandum of Cooperation

The [Memorandum of Cooperation \(MOC\)](#) signed by Governor Gavin Newsom and Ambassador Tomita before the reception covered climate change, trade and investment, renewable energy, energy storage, business exchange, zero-emission vehicles, high-speed rail and other passenger rail services, public transportation, and water conservation and management.

This year's MOC built on the [2014 version](#) covering the same topics and signed by Governor Edmund G. Brown Jr. and Ambassador Kenichiro Sasae.

Ambassador Tomita Remarks

At the CalChamber reception, Ambassador Tomita opened by declaring that U.S.-Japan relations could be summed up in just three words: "never been better."

He went on to explain that Japan wants to invest more in science, technology, and innovation to strengthen their competitiveness and resilience and one way to do that is by protecting supply chains and addressing issues like climate change. Japan is aiming to engage broader nations so they can build a community of nations with shared values.

In 2021, Ambassador Tomita [visited the Port of Los Angeles with Japan's Consul General Akira Muto of Los Angeles](#). The Ambassador exchanged opinions with Japanese companies

with strong hydrogen technologies and observed the efforts of Japanese companies in this area.

Ambassador Tomita told the reception audience that for future advances, it is important that there be success stories like that of the carbon-neutral operations being conducted at the Port of Los Angeles with the Japanese companies in the region.

California has been at the forefront of bilateral efforts because of the solid foundation of business and economic interchanges between the two economies.

California is the only state with two Japanese consulates, which demonstrates the importance that Japan attaches to California.

Trade Overview

U.S. Trade Facts

Japan is the United States' fourth largest export partner. The U.S. is a large supplier of chemicals, transportation equipment, and computer and electronic products to Japan. Japan is also one of the largest U.S. foreign markets for agricultural products.

U.S. exports to Japan were \$74.97 billion in 2021, an increase from \$63.75 billion in 2020. Chemicals, oil and gas, computers and electronic products, transportation equipment, and agricultural products made up the top imports in 2021. U.S. imports from Japan to the United

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States were \$135.13 billion, with transportation equipment accounting for 35.5% of the total. Non-electrical machinery, chemicals, computer and electronic products, and other electrical equipment made up the other top import categories.

California Trade Facts

California continues to be a top exporting state to Japan, accounting for more than 15.8% of total U.S. exports. Japan has remained California's fourth largest export market since 2010, after Mexico, Canada and China. California exports to Japan, the world's third largest economy, totaled \$11.869 billion in 2021. Computers and electronic products accounted for 16% of total exports. Other top exports include transportation equipment, non-electrical machinery, chemicals, and processed foods.

Imports into California from Japan were \$22.39 billion in 2021, with transportation equipment accounting for more than a fifth of total imports. California is currently the top importing state in the United States for products from Japan.

Foreign Direct Investment in U.S., California

According to the most recent figures, U.S. direct investment to Japan totaled \$131.64 billion in 2020, largely in financial, software and internet services (Bureau of Economic Analysis). Foreign direct investment (FDI) from Japan into the United States was \$679 billion in 2020, making it the largest source of FDI in the United States that year.

In 2019, Japanese FDI in the United States supported 973,800 jobs and contributed \$12.9 billion to research and development, as well as another \$82.3

billion to expanding U.S. exports. The top industry sectors for Japanese FDI are auto components, industrial equipment, plastics, automotive OEM, software and information technology services, and metals. (Select USA)

In California, Japan is the largest source of FDI through foreign-owned enterprises (FOEs). Japanese FOEs in California in 2020 provided 115,420 jobs through 3,672 firms amounting to \$10.6 billion in wages, down from 121,223 jobs through 3,880 firms amounting to \$10.988 billion in wages in 2019. The top jobs by sector are manufacturing, wholesale trade, retail trade, financial activities, and professional/business services. (World Trade Center Los Angeles FDI Report, June 2021).

Staff Contact: Susanne T. Stirling

Privacy Attorney Joins CalChamber Policy Team

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ing constitutional and civil rights, corporate/securities laws, tort liability, and access to the justice system.

She has previously worked at the California Department of Technology

during the Brown administration and at the Office of the State Chief Information Officer during the Schwarzenegger administration.

Daylami earned a B.A. in political science with a minor in English at the

University of California, Berkeley, and a J.D. from University of California, Hastings College of the Law, where she was a senior articles editor for the *Constitutional Law Quarterly*.

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