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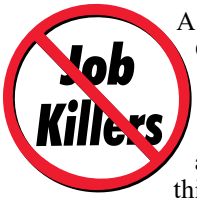
CalChamber

ALERT

De Facto Warehouses Ban Passes First Committee



A California Chamber of Commerce-**opposed job killer bill** that creates a *de facto* ban of warehouses passed an Assembly committee this week.

AB 1000 (Reyes; D-San Bernardino) mandates a statewide setback of 1,000 feet from "sensitive receptors" for all new or expanded logistics use facilities 100,000 square feet or larger in California, regardless of environmental impacts. It also creates a new private right of action.

Passage of AB 1000 will lead to the elimination of high-paying jobs, quash critically needed housing associated with mixed use developments, increase vehicle miles traveled for heavy duty vehicles coming to and from California ports, and incentivize frivolous litigation with the new private right of action in California law.

The bill threatens to severely disrupt already-fragile supply chains and substantially increase the cost of goods movement. The practical effect of AB 1000 becoming law is increased costs for every Californian.

Loss of Good-Paying Jobs

In a letter to the bill's author, Adam Regele, CalChamber vice president of advocacy and strategic partnerships, notes that there are more than 1.6 million trade-related jobs in Southern California alone directly associated with California ports. Millions more California jobs in manufacturing, retail and wholesale trade, construction, transportation and warehousing sectors rely on a healthy goods movement.

AB 1000's *de facto* ban on logistics use facilities will undermine California's

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Senate Committee Rejects Job Creator Bill Improving Labor Law Compliance

A California Chamber of Commerce-**sponsored job creator** bill that would have improved labor law compliance and helped non-English speaking businesses was rejected by the Senate Labor, Public Employment and Retirement Committee this week.

The bill, **SB 592 (Newman; D-Fullerton)**, would have required labor law guidance to be translated into commonly spoken languages in California and protected business owners from being penalized if they relied in good faith on guidance issued by the Division of Labor Standards Enforcement (DLSE).

DLSE Guidance

The DLSE is a state agency that is charged with enforcing the wage, hour and working condition labor laws. As a part of its effort to fulfill this responsibility, the DLSE issues opinion letters on various wage, hour and working condition topics, frequently asked questions (FAQs) regarding new labor laws, as well as an enforcement manual that sets forth

See Senate Committee: Page 7

Labor/Employment-Related Job Killer Bills Moving in Legislature

Several troubling labor and employment-related **job killer** bills have been moving through the legislative committee process.

The bills passed last week including California Chamber of Commerce-**opposed** proposals that undermine arbitration, increase the minimum wage, chill employer speech on political matters, place onerous mandates on return-to-work activities, and expand costly litigation.

Committee actions are summarized below.

To Senate Appropriations

Two bills passed from Senate policy committees to the Senate Appropriations Committee.

• **SB 365 (Wiener; D-San Francisco) Undermines Arbitration.** Discriminates against use of arbitration agreements by requiring trial courts to continue trial proceedings during any appeal regarding the denial of a motion to compel, undermining arbitration and divesting courts of their inherent right to stay proceedings.

SB 365 incorrectly assumes that all appeals related to arbitration are meritless. Moreover, the motive behind SB 365 to deter arbitration and single out arbitration from other types of proceedings will result in a finding that it is preempted by the Federal Arbitration Act.

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Inside

Labor Law Corner

Timing of Meal Breaks Can Avert Strict Liability for Violations

Sharon Novak
Employment Law Expert

Our employees start work at 8 a.m. The owner of the company requires that meal breaks start at 1 p.m. While I have told him that meal breaks should not be scheduled later than 4 hours and 59 minutes into the shift, he insists that a 1 p.m. meal break is compliant since it is exactly 5 hours after work commences and not more than 5 hours. He has asked for written proof of the "4:59 rule." Is there an "official" document stating that meal breaks must start 4 hours and 59 minutes into an employee's eight-hour shift?

There is no statute, regulation, or Labor Commissioner opinion that expressly mandates that meal breaks start no later than 4 hours and 59 minutes ("4:59 practice") into an eight-hour shift.

The 4:59 practice is based on a commonly recognized best strategy to avoid the strict liability of a meal break violation.

Strict Meal Break Requirements

California law provides that employers "shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes." A 30-minute meal period that begins no later than the end of the 10th hour of work also must be provided. (Labor Code Section 512(a)).

There are limited exceptions to these requirements, but an employer should presume that the meal breaks must follow these strict requirements.

Failure to Follow Strict Requirements Results in Liability

If an employee is not given the opportunity to take a timely and uninterrupted meal break, the employee is due one hour of wages as a wage premium (Labor Code Section 226.7(c)). The wage premium is based on the employee's regular rate of pay.

In 2021, the California Supreme Court reinforced the importance of the technical requirements of meal breaks when it ruled that employers could not round the time-clock punches for meal breaks. *Donohue v. AMN Services, LLC* 11 Cal.5th 58, 275 Cal.Rptr.3d 422, 481 P.3d 661 (2021).

The court clearly established that time increments, even small ones like seconds, are crucial to determining whether a meal break time punch is compliant.

"To avoid liability, an employer must provide its employees with full and timely meal periods whenever those meal periods are required," the California Supreme Court said, noting that "even a minor infringement of the meal period triggers the premium pay obligation."

The importance of seconds in accurate timekeeping explains why employers are counseled to apply the 4:59 practice. In the question's scenario, if the employee clocks in at 8:00:00 a.m. and clocks out for lunch at precisely 1:00:00 p.m., there is no violation.

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CalChamber-Sponsored Seminars/Trade Shows

More at ***www.calchamber.com/events***.

Business Resources

California's Recycling Overhaul: A Breakdown of SB 54's Circular Economy. CalChamber. April 28, Online. (800) 331-8877.

California Privacy Rights Act (CPRA) Compliance. CalChamber and Mariner Strategies. May 24, Online. (800) 331-8877.

Labor and Employment

Avoiding Meal and Rest Break Traps. CalChamber. May 18, Online. (800) 331-8877.

HR Boot Camp 1-Day Seminar. CalChamber. May 25, Sacramento and Online. (800) 331-8877.

Leaves of Absence: Making Sense of It All Virtual Seminar. CalChamber. August 24–25, September 21–22, Online. (800) 331-8877.

International Trade

2023 Taiwan Trade Shows. Taiwan Trade Center, San Francisco. March 6–November 8, Taiwan and Online. (408) 988-5018.

Access Africa Now Webinar Series. U.S. Commercial Service. April 11–September 27. (512) 936-0039.

Select LA Investment Summit. World Trade Center Los Angeles and Los Angeles County Economic Develop-

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CalChamber Calendar

Capitol Summit:
May 17, Sacramento

International Forum:
May 17, Sacramento

Sacramento Host Reception:
May 17, Sacramento

Sacramento Host Breakfast:
May 17, Sacramento

Employers Must Explore Reasonable Accommodations for Religion

Religion is one of just two protected classes under California's Fair Employment and Housing Act (FEHA) — disability is the other — that requires employers to explore and provide applicants or employees with a reasonable accommodation where appropriate.

On April 3, the Ninth Circuit Court of Appeal issued a ruling highlighting the potential danger when employers fail to adhere to that process (*Bolden-Hardge v. Office of the California State Controller, et al.* (No. 21-15660, Apr. 3, 2023)).

The California Constitution requires nearly all public sector employes to swear or affirm to "support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic." Employees must also "bear true faith and allegiance" to those constitutions.

Loyalty Oath

In this case, in 2016, Brianna Bolden-Hardge started working for the Franchise Tax Board (FTB) — a government agency within the State of California. When the FTB hired her, she was never required to sign any sort of loyalty oath. A year later, Bolden-Hardge sought, and was offered, a promotion with the State Controller's Office (SCO). As part of the new position, the SCO required Bolden-Hardge to sign a loyalty oath in accordance with the California Constitution.

Bolden-Hardge is a devout Jehovah's Witness, and part of her religious beliefs prevents her from swearing primary allegiance to any government over the Kingdom of God or promising to engage in military activities. So, Bolden-Hardge requested the SCO grant her an accommodation that allowed her to sign the loyalty oath with an addendum that affirmed Bolden-Hardge's primary allegiance to God but also affirmed she would work in good faith to uphold the constitutions.

The SCO rejected her request and withdrew their employment offer. Bolden-Hardge returned to her lower-paying FTB position where they, then, required her to sign a loyalty oath but with Bolden-Hardge's requested addendum.

Bolden-Hardge subsequently filed suit against the SCO for violating several of her rights, including her rights under the FEHA and federal Title VII to be free from religious discrimination and her rights to a religious accommodation where appropriate.

Job or Religion Conflict?

The SCO moved to dismiss the lawsuit because, amongst other defenses, it alleged that it could not accommodate Bolden-Hardge's religious beliefs in this fashion — it would require the SCO to violate the California Constitution. The trial court agreed and dismissed Bolden-Hardge's lawsuit, but she appealed, and now the Ninth Circuit has reinstated her lawsuit.

Focusing on the FEHA and Title VII, the Ninth Circuit explored whether Bolden-Hardge held a "bona fide religious belief" that conflicted with an employment requirement. Bolden-Hardge claims that the loyalty oath requiring her to swear primary allegiance to a human government over God forces her to choose between her beliefs and her job. The SCO countered that the oath's text doesn't require that choice and, thus, doesn't conflict with Bolden-Hardge's religious beliefs.

The Ninth Circuit agreed with Bolden-Hardge that the oath's apparent language still requires primary loyalty to the government over religion even if it is not expressly stated in the oath. After all, the SCO would have accommodated the addendum if it wasn't concerned about the choice of religious beliefs over the primary loyalty to the state.

The SCO then argued that, even if the oath conflicted with Bolden-Hardge's religious beliefs, accommodating Bolden-Hardge in this matter would require the SCO to violate California's Constitution and, thus, would cause undue hardship to the SCO. The SCO's interpretation of the law is accurate — employers that would be exposed to liability for violating the law to effectuate a religious accommodation are excused from providing that accommodation because it is an "undue hardship."

However, in this case, the SCO has not demonstrated that it would be subject to any liability for amending the oath as requested. The fact that the FTB later provided that amended oath to Bolden-Hardge and has not been subject to liability for legal violations undermines the SCO's argument.

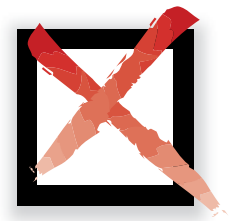
Lessons for Private Employers

Although this case involves government employees and the public sector, this ruling still has lessons for private employers.

Conflict between job requirements and religious beliefs may take many forms and trigger FEHA and Title VII protections. Failing to engage in a good faith, interactive process to explore any and all possible reasonable accommodations exposes employers to liability as much as firing a person due to their religious beliefs. When presented with a religious accommodation request, employers should tread carefully and engage legal counsel to ensure complete compliance with religious accommodation rules.

Staff Contact: Matthew Roberts

Assembly Committee OKs Bill Attacking Direct Democracy System



Legislation that will take away Californians' ability to vote on their legislators' actions passed the Assembly Elections Committee this week.

The bill, **AB 421 (Bryan; D-Los Angeles)**, is **strongly opposed** by the California Chamber of Commerce and a coalition of business associations and local chambers of commerce.

As the coalition points out in a letter to the author, AB 421 dramatically changes the state's direct democracy process to essentially eliminate the ability for anyone to qualify a referendum.

The referendum, together with the initiative and the recall, is one of the three direct democracy processes created by Governor Hiram Johnson and Progressive leaders more than 100 years ago to allow the people of California to hold elected representatives accountable for their actions.

Compared with the initiative, the referendum is used lightly. According to the Secretary of State, only 33 state referenda have qualified and gone before the voters in the last 100 years. In the same period, tens of thousands of pieces of legislation have been enacted.

"Despite suggestions otherwise, there is no evidence that the referenda process is controlled or manipulated by any interest. In fact, in the last 70 years of the 17 referenda that have qualified, 10 of them have had to do with redistricting or Indian gaming compacts," the coalition said in its letter.

Problems with AB 421

• **Constrains public's role in the ballot process.** By requiring that at least 10% of signature collection be done by volunteers, AB 421 would make signature gathering prohibitively expensive, thereby ensuring that only the wealthiest of special interests can participate in the electoral process. Similar proposals have been vetoed five times by the last three Governors; their veto messages cited concerns that the increased cost of signature gathering would create barriers to citizen participation in the process and favor wealthy special interests.

• **Changes the vote question — a solution in search of a problem.** Currently, a referendum that qualifies for the ballot asks voters to step in the shoes of the Legislature to consider the proposed law. Voters vote "yes" on the measure to approve the proposal, and "no" to reject it. AB 421 instead asks voters to second-guess the Legislature and vote about the Legislature's action, not about the proposed law itself. This is a profound difference from the historic intent and function of the referendum. Any such change would be ill-advised and could likely be made only with a constitutional amendment. In any case, there is no evidence that the long-standing approach has confused voters, who have approved 16 (48%) of the 33 laws subject to the referendum over the last 100 years and rejected 17 (52%) of the referended statutes.

• **Creates shorter time frame to collect signatures for some types of initiatives with no rationale.** The proposal limits to 90 days the amount of time that proponents of some types of initiatives have to gather signatures, while other types of initiatives would remain at 180 days from when proponents file their intended paperwork with the Secretary of State. There is no substantive reason to distinguish between different subjects of initiatives and the change could have unintended consequences.

• **Sets up arbitrary bureaucratic deadlines for updating paperwork.** Under the proposal, the petitions that are used to collect signatures for referenda or certain initiatives would have to follow a strict template — stricter than for initiatives under the current law. The new requirements would lead to significant increases in printing costs as campaigns would have to constantly discard and replace out-of-date petition sheets. Signatures on the discarded petition sheets would be invalidated, adding to the practical impossibility for proponents to gather the required number of signatures in the shortened time frame allowed.

Oppose AB 421

The CalChamber and coalition will continue to urge legislators to **oppose AB 421**. By making it harder to qualify referenda and certain initiatives, this proposal is denying Californians the right to address grievances with their government. Californians cherish direct democracy and this would eliminate that opportunity.

The bill will be considered next by the Assembly Appropriations Committee.

Staff Contact: Ben Golombek

Timing of Meal Breaks Can Avert Strict Liability for Violations

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However, if the punch out is at 1:00:01, the meal break has started one second into the sixth hour. This is a meal break violation. The importance of seconds is why the 4:59 practice is recommended. This avoids any issue regarding compliant start times.

Moreover, an employer should not consider pre-populating time punches with "compliant" meal break times. The law requires accurate reporting of meal breaks. Time records that show meal breaks starting every day at precisely 1:00:00 p.m. for all employees will be immediately suspect and invite examination of time-keeping practices.

'Official' Rules Require Test Cases

Employers like the one here that require employees to take their meal breaks exactly at the end of the fifth hour risk meal break violations based on seconds.

For a California employer to obtain an "official" ruling that the meal break should start no later than 4 hours and 59 minutes into an 8-hour shift, a company must be willing to allow a challenge to their practice of requiring the break at exactly the fifth hour.

Because meal break violations often form the basis of Private Attorneys General Act (PAGA) claims, this may be a battle not worth fighting.

Column based on questions asked by callers on the Labor Law Helpline, a service to California Chamber of Commerce preferred members and above. 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.

De Facto Ban of Warehouses Passes First Committee Hurdle

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ability to remain competitive, especially as the state already struggles to find adequate off-docking facilities to move goods from the ports.

Prevents Housing Construction

The bill essentially eliminates the ability to locate housing near job sites, which will stymie mixed-use development projects from moving forward.

For example, the District at Jurupa Valley project proposes the development of up to 1,192 residential units and seven acres of open space and parks alongside commercial, retail and logistics use facilities. The housing associated with the Jurupa Valley project is feasible only because of the underlying infrastructure from the commercial, logistics and retail uses. These land uses buffer the residential housing from the 60 Freeway and drastically reduce vehicle miles traveled, consistent with California's climate change goals. If AB 1000 were law, projects like Jurupa Valley never would come to fruition.

Relies on Outdated Data

As Regele reiterated in April 17 testimony, AB 1000 attempts to deal with truck emissions associated with goods movements to and from warehouses using a rudimentary and outdated 1,000-foot setback concept dating back to a 2005 advisory document from the California Air Resources Board (CARB).

Since 2005, CARB has implemented rules to eliminate diesel particulate matter (PM) on nearly all diesel-powered equipment, including trucks and refrigeration units. As of January 2023, all trucks statewide are required to be equipped with diesel particulate filters and catalysts that reduce smog-forming emissions.

A CARB analysis found that the PM filters are effective and operating as designed. The Port of Los Angeles has reported a 98% reduction in diesel PM10 and PM2.5 from heavy duty trucks since 2005.

Existing laws and adopted regulations in California continue to lead the nation and will reduce emissions even further as more stringent targets are phased in.

Increased Litigation

AB 1000's private right of action empowers virtually anyone to act as a prosecutor to sue to block any facility with which they disagree. This new avenue for litigation would enrich trial attorneys, slow projects and drive up development costs. At the same time, such a threat will shut down the willingness of investors to expand their businesses and workforce in California.

Overly Broad

Comments from committee members echoed opponents' concerns about AB 1000's threat to projects, impact on jobs, and potential to increase vehicle miles traveled, thereby increasing pollution.

Assemblymember Rick Zbur said the bill as presented to the committee is "too broad and picks up too much." Without specific and tighter definitions, he noted, AB 1000 could lead to 80 blocks of buffer around facilities like Costco or public storage places, include standard industrial and business parks, and prevent a facility from getting a permit for things like grading the property or installing electric chargers or solar panels.

Assemblymember Heath Flora pointed out that warehouses provide the tax base that support services to communities where the facilities are located and people move closer to work around the good-paying, union warehouse jobs.

Assemblymember Muratsuchi suggested the author clarify the definition of qualified logistics uses so that AB 1000 won't inhibit the ability of aerospace companies to complete world-leading, innovative projects, such as the James Webb Space Telescope, which was assembled in Redondo Beach.

Key Vote

AB 1000 passed the Assembly Natural Resources Committee on April 17, 8-3:

Ayes: Addis (D-Morro Bay), Friedman (D-Glendale), Muratsuchi (D-Torrance), Pellerin (D-Santa Cruz), Luz Rivas (D-San Fernando Valley), Ward (D-San Diego), Wood (D-Santa Rosa), Zbur (D-West Hollywood).

Noes: Flora (R-Ripon), Hoover (R-Folsom), Mathis (R-Porterville).

AB 1000 will be considered next by the Assembly Local Government Committee.

Staff Contact: Adam Regele

CalChamber-Sponsored Seminars/Trade Shows

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ment Corporation. April 26–27, Los Angeles. (213) 236-4853.

11th Annual Pan African Global Trade and Investment Conference. Center for African Peace and Conflict Resolution. April 26–30, 2023, Sacramento. *info@panafricanglobaltradeconference.com*.

14th Annual Mexico Advocacy Day: The Future of the California-Mexico Relationship: A Partnership for Growth. CalChamber Council for International Trade and Consulate General of Mexico, Sacramento. May 1, Sacramento. (916) 444-6670, ext. 233. RSVP by April 26.

Export Week 2023. U.S. Commercial Service. May 1–5, Online. *anthony.sargis@trade.gov*.

Emerging Trends in U.S. Indo-Pacific Strategic Policy. U.S. Commercial Service. May 3, San Bernardino. (202) 597-9797.

The Stockholm Model — Creating Sustainable Impact for Society through Collaboration and Innovation. KTH Royal Institute of Technology. May 8–9, San Francisco. 46-8-790 65 50.

Annual Export Conference. National Association of District Export Councils (NADEC). May 9–10, Washington, D.C. *aburkett@naita.org*.

U.S. to EU: How to Sell into European Union via eCommerce. International Trade Administration, Getting to Global and U.S. Commercial Service. May 18, Online. (800) 872-8723.

NAFSA Annual Conference & Expo. National Association of International Educators. May 30–June 2, Washington, D.C. (202) 737-3699.

Trade Mission 2: California Water Tech Trade Mission to Mexico. Governor's Office of Business and Economic Development (GO-Biz). June 5–9, Tijuana and La Paz. *diana.dominguez@gobiz.ca.gov*.

Infosecurity. Infosecurity Europe. June 20–22, London. (+44) 20 82712130.

Labor/Employment-Related Job Killer Bills Moving in Legislature

From Page 1

Passed the Senate Judiciary Committee on April 11, 8-2, and will be considered next by the Senate Appropriations Committee:

Ayes: Allen (D-Santa Monica), Ashby (D-Sacramento), Durazo (D-Los Angeles), Laird (D-Santa Cruz), McGuire (D-Healdsburg), Min (D-Irvine), Umberg (D-Santa Ana), Wiener (D-San Francisco).

Noes: Niello (R-Sacramento), Wilk (R-Santa Clarita).

No vote recorded: Stern (D-Canoga Park).

• **SB 525 (Durazo; D-Los Angeles) Costly Minimum Wage Increase**. Imposes significant cost on health care facilities and any employer who works with health care facilities by mandating increase in minimum wage to $25/hour.

If passed, the bill will cost health care facilities billions of dollars, reducing access to critical health care services, increasing health care costs and reducing jobs. The inevitable ripple effect of SB 525 would be a mix of increased cost of care and reduced jobs and services.

Broad language in the bill covers employers of all sizes outside the health care sector, including those that may employ any worker who sets foot on the premises of a health care facility or who performs any "health care service" for a facility. These services are broadly defined to include janitorial staff, food service, laundry and more.

Passed the Senate Labor, Public Employment and Retirement Committee on April 12, 4-1, and will be considered next by Senate Appropriations:

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

No: Wilk (R-Santa Clarita).

To Senate Judiciary

Senate Labor passed two bills along to Senate Judiciary for further work by the same 4-1 vote as SB 525:

• **SB 399 (Wahab; D-Hayward) Bans Employer Speech.** Chills employer speech regarding religious and political matters, including unionization. Is likely unconstitutional under the First Amendment and preempted by the National Labor Relations Act.

In opposing SB 399, the CalChamber noted that it will have a chilling effect on any speech related to political matters and that existing state and federal laws already protect employees.

The bill violates the First Amendment by prohibiting employers from providing a forum for discussion, debate and expressing their opinions about matters of public concern. In addition, any prohibition against employers speaking about unionization is preempted by the National Labor Relations Act.

• **SB 627 (Smallwood-Cuevas; D-Los Angeles) Onerous Return to Work Mandate**. Imposes an onerous and stringent process to hire employees based on seniority alone for nearly every industry, including hospitals, retail, restaurants, movie theaters, and franchisees, which will delay hiring and eliminates contracts for at-will employment.

SB 627 will bog down hiring and undermine basic management for businesses. It seeks to micromanage the rehire process for the affected businesses. Several of the provisions will delay rehiring and increase costs on employers.

The CalChamber has pointed out there is no justification for SB 627 and it likely violates the contracts clauses in the U.S. and California constitutions. As defined in the bill, "chain" would include a multitude of businesses and industries, such as retail, restaurants, grocery stores, hotels, hospitals/health care facilities, movie theaters, and more. For all these industries, SB 627 creates a problematic, permanent statutory scheme that eliminates at-will employment and mandates hiring based on seniority alone.

In addition, SB 627 would have a negative impact on franchisees; its definition of "chains" would include locations independently owned by franchisees. California has nearly 76,000 franchise units. Franchise establishments are locally owned small businesses operating under a national brand or identity. The local business owners are in charge of all employment decisions, including hiring, firing, wages and benefits. It is the local franchisee who owns and operates the establishment, not the franchisor. In fact, the national brands have no role whatsoever in determining any day-to-day operations of a franchisee's employees, employment or hiring practices of a franchisee.

To Assembly Appropriations

The Assembly Labor and Employment Committee sent one job killer to the Assembly Appropriations Committee:

• **AB 524 (Wicks; D-Oakland) Expansion of Litigation Under FEHA**. Exposes employers to costly litigation under the Fair Employment and Housing Act (FEHA) by asserting that any adverse employment action was in relation to the employee's family caregiver status, which is broadly defined to include any employee who contributes to the care of any person of their choosing, and creates a *de facto* accommodation requirement that will burden small businesses.

Problems with AB 524 identified by the CalChamber include the broadly defined term "family caregiver status," which is a subjective determination.

The *de facto* accommodation requirement established by the bill is in addition to existing leave laws that provide employees time to act as a caregiver with penalties for employers that retaliate against an employee for using the leave such as: school or childcare center being unavailable, California Family Rights Act (broadened this year to include designated nonfamily members), the Healthy Workplace Healthy Family Act and related "kin care" laws.

AB 524 exposes employers, including small businesses, to costly litigation due to its private right of action.

Passed Assembly Labor and Employment on April 12; will be considered next by Assembly Appropriations:

Ayes: Haney (D-San Francisco), Kalra (D-San Jose), Ortega (D-San Leandro), Reyes (D-San Bernardino), Ward (D-San Diego).

Noes: Chen (R-Yorba Linda), Flora (R-Ripon).

Staff Contact: Ashley Hoffman

Senate Committee Rejects Job Creator Bill Improving Labor Law Compliance

From Page 1
the DLSE's interpretation and position on these issues.

This guidance was critical, for example, during the COVID-19 pandemic due to the number of new laws and ever-changing regulations. Currently, employers must refer to the DLSE's written materials for "guidance" on these topics when there is no published, on-point case available.

The DLSE can levy penalties against an employer for failing to comply if an employee files a wage claim. The Catch-22 is that employers are provided with no certainty that they will be shielded from penalties if they comply in good faith with the DLSE's written opinions or interpretations.

There have been numerous instances where courts have veered in a different direction from established DLSE guidance, resulting in employers owing not only back wages, but also penalties under the Private Attorneys General Act (PAGA), Labor Code Sections 203, 226, and more.

SB 592 would have eliminated this problem and provided businesses in California with the security to know that, if they seek out and follow written advice from the DLSE regarding how to comply with the law, they can actually rely upon that information. Specifically, the bill would have prevented an employer from being financially penalized through the assessment of statutory civil and criminal penalties, fines and interest if the employer relies in good faith on written advice from the DLSE and a court ultimately determines the DLSE's advice was wrong.

Further, while employers are expected to follow this guidance and can be penalized by the DLSE for failing to do so, the guidance is essentially unusable for non-English speaking employers. While some materials are available in Spanish under a separate index page, the guidance materials are not translated into other common languages spoken in California such as Chinese, Tagalog, and Vietnamese.

Would Have Helped Small Businesses

California has complex, burdensome labor and employment laws that are unique from the rest of the country. Small businesses that lack the financial resources to hire a human resources department or outside counsel to advise them on how to comply with these labor and employment laws have only the DLSE for guidance.

SB 592 would have helped such small businesses by encouraging them to seek out and rely upon the advice they receive from the DLSE regarding how to comply with the law.

During these difficult economic times, small businesses need certainty and SB 592 would have provided that certainty when state government provides advice.

Key Vote

SB 592 failed to pass Senate Labor, Public Employment and Retirement on a vote of 1-3:

Ayes: Wilk (R-Santa Clarita).

Noes: Cortese (D-San Jose), Laird (D-Santa Cruz), Smallwood-Cuevas (D-Los Angeles).

Not voting: Durazo (D-Los Angeles).

Staff Contact: Ashley Hoffman