

ALERT

Newest Job Killers Target Grocery Workers, Tax Rates



Bills expanding lawsuit conditions for grocery workers and increasing tax rates for successful California businesses have been added to the California Chamber of Commerce job killer list.

AB 647 (Holden; D-Pasadena) significantly expands the statute related to successor grocery employers, including disrupting the ability for independent small stores to join together; expands the number of workers covered under the law; and creates a significant new private right of action.

SB 220 (Senate Budget and Fiscal Review Committee) increases the tax rate of companies that shoulder the vast majority of corporate tax liability from 8.84% to 10.99% — amounting to a 24% higher tax bill.

AB 647: Grocery Workers

AB 647 expands the list of eligible grocery workers covered by worker

retention and private right of action conditions to include a newly defined “separated employee.”

The broad definition of “separated employee” includes any employee employed by a grocer impacted by a change in ownership who was employed for 6 months or more in the 12 months preceding the change in store control and whose most recent separation was due to change in control, lack of business, reduction in force, or transfer.

Employee separation occurs for many reasons, including by choice. Under AB 647, grocers will now have to reenlist “separated employees” within an arbitrary 15-mile radius of their residence, even if that employee separated by choice.

AB 647 also creates a rebuttable presumption that any employee’s termination within a year of change of ownership was due to non-disciplinary reasons. It then goes further by requiring the successor grocer to offer these employees right of refusal to return for employment.

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CalChamber Urges Support for Governor’s Infrastructure Plan



The California Chamber of Commerce is urging legislators to adopt the bills in

Governor Gavin Newsom’s infrastructure streamlining package.

These proposals, CalChamber President and CEO Jennifer Barrera stressed, address the urgent needs of California’s aging infrastructure while prioritizing the state’s workforce, environment, and economy.

In a letter sent to legislators last week, the CalChamber pointed out that California’s unparalleled climate change goals and policies cannot be realized under the state’s current permitting trajectory.

CalChamber representatives also testified in support of the package at each of three legislative hearings this week.

Coalition Letter

This week, the CalChamber joined a coalition of labor unions, businesses, ethnic business leaders, local governments and others in signing a letter to legislators expressing strong support of the Governor’s plan to streamline critical infrastructure projects.

The June 5 letter urged legislators to work with the administration to adopt these proposals as part of this year’s state budget process.

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CalChamber-Opposed Bills Miss Deadline



OPPOSE

Missing the June 2 deadline to pass the house in which they were introduced were:

Two problematic bills **opposed** by the California Chamber of Commerce failed to move out of the Assembly last week and are likely dead for the year.

• **AB 9 (Muratsuchi; D-Torrance): Greenhouse Gases.** Imposes additional evaluation criteria on California’s cap-and-trade program that will lead to market instability and increased costs for consumers.

• **AB 1290 (Luz Rivas; D-San Fernando Valley): Bans Critical Packaging.** Circumvents the Circular Economy framework outlined in SB 54 (Allen; D-Santa Monica) of 2022 by banning critically needed packaging used for products like over-the-counter medicines and to extend the shelf life of food products.

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Labor Law Corner

How to Track Family Leave When Workweek Includes a Holiday



Matthew J. Roberts
Labor Law Helpline
Manager

We have an employee that is currently on California Family Rights Act (CFRA)/ Family and Medical Leave Act (FMLA) leave and will be using leave during the week of the Fourth of July holiday. How do we count the holiday for leave tracking purposes?

Anyone familiar with administering an employee's leave of absence under the federal Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) knows the basic rules can make one's head spin.

Of course, there is a significant amount of paperwork just getting an employee on CFRA/FMLA leave between the notices, designation forms, and wage replacement pamphlets.

Tracking the leave, however, can be its own battle for leave administrators due to the complexities around intermittent leave. So, how do holidays complicate matters further?

Tracking CFRA/FMLA Leave

Under the CFRA/FMLA leave rules, an eligible employee may take up to 12 weeks of leave in a designated 12-month period. The regulations highlight that "weeks" under these laws means the employee's regular workweek. The leave does not have to be taken all at once and often is dictated by the qualifying reason for the leave.

Intermittent leave most commonly occurs for the employee's own serious health condition or that of a qualifying family member. The leave duration is determined by the medical provider's certification, which could certify whole weeks off or increments as small as an hour in a workday.

In the case of intermittent leave,

employers will need to break down the employee's 12 weeks into days and hours and track from there.

For example, if an employee who ordinarily works five days a week needs two days off, multiply the 12 weeks by the five days to get 60 total days that the employee may have off in the 12-month tracking period. Every day used for leave gets subtracted from the balance until the 12-month period resets or the employee exhausts the leave.

Holidays

An employer's holiday policy can affect how we track leave depending upon the reason for the leave. Both the CFRA and FMLA regulations are consistent with how to track leave accounting for a holiday in that workweek.

Let's assume that an employer closes the workplace for the Fourth of July holiday. In this case, if the employee is taking a full workweek off during the week in which the Fourth of July holiday falls, then the employee still will have a full workweek deducted from their leave balance.

If, instead, the employee is taking

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More at www.calchamber.com/events.

Labor and Employment

Pregnant Pause: Providing Pregnancy and Child Bonding Leaves. CalChamber. June 15, Online. (800) 331-8877.

HR Boot Camp 2 Half-Day Virtual Seminar. CalChamber. June 22-23; August 10-11; September 7-8, 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.

Export Compliance: Best Practices 2023. Jennifer Diaz Trade Law. June 13,

Online. (316) 259-5324.

Trade Is a Four-Letter Word (But It Doesn't Have to Be a Bad One).

Women in International Trade (WIT) Northern California. June 14, Redwood City. (650) 366-4104.

On the Move in Silicon Valley: Japan and the Search for Mobility Tech. Japanese Chamber of Commerce of Northern California. June 20, Santa Clara. (714) 350-6366.

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

Empowering Women-Owned Businesses for Global Expansion. Women in International Trade, Los Angeles. June 23, Los Angeles. (213) 545-6479.

2023 Canada Specialty Food & Beverage Outbound to Canada. Western U.S. Agricultural Association. June 25-30, Toronto and Vancouver, Canada. (360) 693-3373.

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The Workplace

Identifying Indicators of Distress and Ways Employers Can Help



In Episode 176 of The Workplace podcast, CalChamber employment law expert Matthew Roberts speaks with clinical social worker

Amanda Gibson about mental health in the workplace, including how employers can detect mental distress in workers and what to do to help.

Businesses today are grappling with a lot of challenges, from the economic to the operational, such as supply chain issues, increased costs and regulations, as well as either labor shortages or too much labor in the workforce.

But one factor that can significantly impact a company's success or failure is the mental well-being of its employees, Roberts says in kicking off the podcast.

Opening Up About Mental Health

A recent survey, Roberts says, indicated that there's a significant generational gap among employees who experience mental distress in the workplace. The research shows that millennials and Gen Z workers have a harder time with mental health compared to Baby Boomers and Generation X.

Gibson, who has worked for more than 15 years in clinical and leadership roles, points out that we all need to realize that we have just gone through a collective traumatizing event caused by the COVID-19 pandemic.

It's time, she says, to reflect on what we experienced in the last three years.

"In my anecdotal experience, what I'm hearing when I do organizational wellness

workshops, as well as with my clients, is that there's some unresolved trauma within workplaces and how the pandemic was managed by leadership, and a lot of grief and loss with turnover with the Great Resignation and people losing co-workers that they really cared for," Gibson says.

Additionally, she says that one factor that may contribute to the generational gaps reported in the study on employee mental health, may be that millennial and Gen Z workers were socialized as children to talk about their feelings and have more emotional intelligence and awareness than older workers.

Signs of Distress

Mental health issues in the workplace can lead to absenteeism, low productivity and even turnover. Since not all workers are comfortable opening up about their mental health needs, what kinds of behaviors should employers look out for, Roberts asks Gibson?

Gibson replies that there still is a lot of stigma surrounding mental health, so it's important that workplaces normalize talking about mental health, and remind employees how to access mental health benefits, including informing them on the differences between the Employee Assistance Program (EAP) versus health insurance versus private pay.

Additionally, there are trainings offered from Mental Health America organizations and the Counseling Collaborative, where one can go in and have workshops and normalize discussing well-being, wellness and mental health in the workplace, she says.

A behavior pattern that employers can look for are workers who are highly reactive.

"If we see someone's reactivity to a stressor that's really heightened and intense, and maybe a little different than what you're used to seeing, that could be an indication they're struggling," she says.

Other signs include obvious muscle tension in the person, if an employee is talking about having poor sleep (poor sleep can be an indication of depression or anxiety), or chronic illnesses.

Another factor that may contribute to mental distress is burnout.

Signs of burnout, Gibson says, include exhaustion, depletion and a lack of connection to the work being performed.

"You'll hear people say, even if they've been achieving things and are productive, that they're not really feeling that they are. They're not as connected, they will perceive their productivity as lower," she says. "And that distance from their meaning and purpose at their job can really be a big indication of burnout."

Work-Life Harmony Is Key

Helping employees achieve work-life harmony is important to fostering wellness in the workplace, Gibson says. This means more autonomy over the work employees perform, schedule flexibility and access to paid leave.

Moreover, boundaries between when work starts and stops, and one's personal life starts and stops is key.

"Lack of boundaries will well lead to burnout, resentment, those kinds of things," she says.

Universal Human Needs

One resource Gibson highly recommends is the Surgeon General's Frame-

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CalChamber Member Feedback

"With CalChamber, our small business has a big seat at the table. Their two-decade record of stopping job killer legislation shows my membership is money well-spent."

Diane D. Miller
President
Wilcox, Miller & Nelson

The Workplace

Employer Best Practices to Ensure Compliance with State Equal Pay Act



In **Episode 177** of The Workplace podcast, CalChamber employment law expert Matthew Roberts sits down with Bianca Saad,

CalChamber vice president of labor and employment for content, training and advice, to discuss the legal requirements of the California Fair Pay Act and provide best practices for improving compliance.

California Fair Pay Act

Commonly referred to as the Equal Pay Act, the California Fair Pay Act prohibits paying employees less than others of the opposite sex or another race, ethnicity, or other protected category for substantially similar work.

“Substantially similar” refers to work that is performed using similar skill, effort, responsibility and working conditions, Saad explains. The job title or function does not have to be the same; rather it’s the work involved that is key.

Another component to the Fair Pay Act is that employers cannot have workplace rules that prohibit employees from disclosing their wages nor prohibit employees from asking or discussing wage rates with co-workers.

And lastly, Saad says, employers cannot prohibit employees from exercising their rights under the Equal Pay Act.

Bona Fide Factors

The Equal Pay Act does not require that everyone performing substantially similar work be paid the same. Saad explains that employees can be paid differently for substantially similar work, but the reason for the disparity in pay

must be based on a bona fide factor other than sex, race or ethnicity. If relying on bona fide factors, employers will need to be able to explain and demonstrate the justification for the pay disparity.

Bona fide factors could be a seniority system, merit system, education, training, experience, geographic location and even shift times. For example, some companies have pay differentials that pay night shifts more because those shifts are typically less desirable, and the higher pay attracts workers.

Whatever rules employers decide upon, they should be careful to apply rules uniformly, Saad stresses.

Best Practices

Audits

One compliance best practice is audits.

Saad says that auditing can include auditing your own organization’s practices around pay and compensation decisions, and conducting a true compensation audit, meaning doing a thorough audit of what individuals are making to find pay disparities.

Audits around actual pay can be tricky, so working with legal counsel is going to be imperative as there will be concerns like maintaining confidentiality, privilege, etc., Saad advises. There are benefits, however, to these audits because if disparities are found, then the employer can remedy them.

Auditing an organization’s practices is a great place for any organization to start because the purpose is to evaluate what the organization is doing, who’s making the compensation decisions, and what criteria are being relied upon. If employers find that there are inconsistencies in how things are done, it might indicate that there could be problems down the road, Saad points out.

Job Descriptions

Another best practice is to look at your company’s job descriptions.

Job descriptions play an important role, so companies want to ensure that job descriptions are accurate and up to date, Saad says. The job descriptions should reflect appropriately what individuals are doing so that the company knows that it is comparing the right people.

Documentation

Documentation is one of the most important things an employer has as memories fade and stories change, Roberts says. What are the kinds of documentation that employers should keep in place to ensure that they’ve got good compensation decisions that are justified, Roberts asks Saad?

For documentation purposes, job descriptions, performance reviews and documentation from the hiring process that would substantiate bona fide factors are key. Pay increases should be documented as well, including the reasons behind the pay increase.

This is “so that when you’re comparing, and you can see a trend on one side differing from a trend on another, you can...show those justifications as to why those pay disparities exist,” Saad says.

Training

It is very important that a company’s decision makers understand the laws around equal pay and what the obligations are, Saad emphasizes.

One obligation that California employers have now is that they must provide a pay scale of all employees upon request. So, it’s important that not just human resources professionals know about these requirements. Supervisors and managers must know what to do if they’re handed a request too, she says.

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work for Mental Health & Well-Being in the Workplace.

This framework, she says, talks about universal human needs, and what workplaces can do to provide those. For example, the framework talks about how

workplaces can be great places to cultivate trusting relationships, and foster collaboration and teamwork. Because we often spend more time at work than at home, it’s important to create moments where people can connect.

“I want to really have these moments

that I really miss from before, like the water cooler, the lunches, the walks, the jokes, the inside jokes, just the connection between the people you work with,” she says.

California Works

Visit California Partners with Communities to Drive Smart, Sustainable Tourism Growth



This article is a part of a series of profiles of CalChamber member companies that are contributing to the state's economic strength and ability to stay competitive in a global economy. Visit California Works to learn more about this series and read past and future profiles.



Visit California is a nonprofit organization that works in partnership with the state's travel industry to develop and maintain marketing programs that keep California top-of-mind as a premier travel destination.

As a leading destination for travelers worldwide, California boasts a robust tourism industry that serves as a major driver of jobs and economic activity in communities throughout the state.

Tourism Is Bouncing Back

As visitors from around the world return to rediscover the Golden State, California's tourism industry is accelerating recovery from an industrywide downturn during the pandemic. New projections show visitor spending this year will exceed pre-pandemic levels, despite potential headwinds from inflation.

According to Visit California's recently released *Economic Impact Report*, visitor spending hit \$134.4 billion in California in 2022 — 93% of the way back to pre-pandemic levels.

"I'm happy to report California tourism has bounced back from the devastating human and economic toll of the pandemic and continues to provide value for all Californians," said Caroline Beteta, president and CEO of Visit California. "California's iconic destinations are again welcoming visitors from around the world, growing tourism's economic contributions beyond 2019 levels and putting hundreds of thousands back to work."

Jobs in the state's tourism industry also nearly returned to pre-pandemic levels in 2022. The travel sector added 157,000 jobs in California last year, bringing the total number of jobs supported by tourism to 1.1 million statewide. Additionally, visitor-generated tax revenue, which supports essen-



tial services in California communities, increased by 21.6% to \$11.9 billion.

The benefits of tourism's recovery are reaching cities and destinations throughout California as the uneven tourism recovery seen a year ago is leveling out. The state's largest urban centers, which were hit hardest by the pandemic, benefited from a return of business and meeting travelers as conferences resumed in California cities.

Planning for a Smart, Sustainable Future

Given tourism's vital role in California's economy, efforts to plan for a more sustainable future for the industry are a top priority.

To help destinations shape the future of California's tourism industry, Visit California is conducting extensive

research with industry stakeholders, residents and civic leaders across the state to prepare plans specific to each of California's 12 tourism regions: San Diego County, Orange County, Deserts, Inland Empire, Los Angeles County, Central Coast, Central Valley, Gold Country, San Francisco Bay Area, High Sierra, Shasta-Cascade and North Coast.

Goals for plan development include:

- Identifying industry opportunities and challenges to recommend strategies for improvement to be implemented over 10 years.
- Creating community- and industry-wide support for responsible travel principles and strategies to protect the environment and cultural assets.
- Assessing climate impacts to and from tourism in each region and recommending courses of action for destinations and businesses.
- Encouraging destination tourism development that maximizes diversity and equity and appeals to all visitors.
- Building lasting alliances between the tourism industry and each region's civic, governmental and political leadership.
- Establishing stronger links between tourism and its economic impact on local communities while mitigating links between tourism and negative impacts.
- Developing priority recommendations for infrastructure projects that aid tourism.

This effort is currently underway and is scheduled to conclude in late 2024 with the delivery of plans, recommendations and action items in each of California's tourism regions.

From there, tourism businesses and California's 300-plus destination management organizations will use the findings and recommendations to inform business decisions and opportunities for partnerships with local governments and nonprofits and build a more sustainable future for the industry.

Economic Analyses Assess Job Loss, Budget Impact of Job Killer Bills



The economic impacts of two labor and employment bills identified as **job killers** by the California Chamber of Commerce are projected in recent analyses by a respected consulting firm.

SB 365 (Wiener; D-San Francisco), which undermines arbitration, could cause California to lose up to 18,000 jobs and up to \$129 million in state taxes, according to the analysis.

A separate analysis concluded that **SB 616 (Gonzalez; D-Long Beach)**, which doubles the state's existing sick leave mandate, could lead to up to 180,000 jobs lost and \$1.4 billion in lost state taxes.

Both analyses were conducted by Encina Advisors, LLC on behalf of the California Foundation for Commerce and Education, a CalChamber-affiliated think tank.

SB 365

SB 365 discriminates against the 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.

The economic analysis estimates that resolution delays caused by the bill would lead to 4,600 to 18,300 jobs lost and \$32.3 million to \$129.2 million in lost state taxes.

The analysis assumes a delay of one year or more in resolving employment disputes that normally would be resolved

through arbitration and estimates the average value of an employment dispute to be \$306,856.

This estimated delay harms employees because they would not be able to access their restitution until the case is settled if they prevail.

Similarly, even if the employer prevails, the employer is still harmed because the monetary claim was tied up until resolution. This means that for a year or more, the company was unable to invest the money into company operations or in salaries and wages for others. **Civil Litigation Benefits Attorneys Not Workers**

The motive behind SB 365 and its likely result is to increase civil litigation, the CalChamber pointed out in a letter to legislators.

The stakeholder that generally profits from civil litigation is the attorney, not the consumer or worker. For example, consumers and employees typically receive higher awards and have their claims resolved more quickly in arbitration than litigation. The same holds true when one looks at data from California's own agencies regarding outcomes in litigation versus agency enforcement.

In the case of the Private Attorneys General Act (PAGA), the current average payment that a worker receives from a PAGA case filed in court is \$1,300, compared to \$5,700 for cases adjudicated by the state's enforcement agency. Attorneys on average recover a minimum of 33% of the workers' total recovery, or \$372,000 on average in litigation. In addition

to receiving lower average recoveries in PAGA cases, workers also wait almost twice as long for their owed wages.

By requiring litigation to continue in every case during the appeal of a denial of a motion to compel, SB 365 undercuts the benefits of arbitration in providing a speedier, less costly forum in which to resolve disputes, the CalChamber stressed.

SB 365 awaits consideration by the Assembly Judiciary Committee after passing the Senate on May 24.

SB 616

SB 616 imposes new costs and leave requirements on employers of all sizes, by more than doubling California's existing sick leave mandate, which is in addition to all other enacted leave mandates that small employers throughout the state are already struggling with to implement and comply.

SB 616 amends the California Healthy Workplaces, Healthy Families Act to increase the minimum number of sick days granted under the law from 3 days to 7 days, increase the cap that employers can place on paid sick days from 6 days to 14 days, and increase the number of paid sick days an employee can roll over to the next year from 3 days to 7 days.

The CalChamber has pointed out to legislators that businesses in California that can afford to offer more than three days of sick leave are doing so, but many other employers in this state simply cannot absorb that cost. The mandated,

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CalChamber Urges Support for Governor's Infrastructure Plan

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The letter stated that the infrastructure streamlining package is essential to accelerate critical energy, water and transportation infrastructure projects needed to achieve California's world-leading climate goals while also preparing the economy for the future and creating hundreds of thousands of good-paying, union construction careers.

Combined, these proposals will streamline permitting, cut red tape, reduce time-consuming litigation and make other changes that will take years off of the timeline of projects while saving taxpayers, state and local governments and businesses hundreds of millions of dollars.

"Simply put, our current system is burdened with systemic delays, red tape and roadblocks that make it too difficult to build the critical infrastructure our state needs. We must do better. The Governor's infrastructure streamlining proposals do just that," the letter concluded.

CalChamber Letter

CalChamber's letter to legislators last week provided more detail on how streamlining projects moves the state toward its goals.

California released the world's first plan to achieve carbon neutrality by 2045, an aggressive target that includes unprecedented steps to reduce greenhouse gas (GHG) emissions from all sectors of the economy, including energy, transportation, agriculture and other industries. Last year, the California Legislature raised the bar again by setting interim goals of 90% zero-carbon electricity sales by 2035 and 95% by 2040.

The California Air Resources Board projects that meeting the state's clean energy targets will require electricity generation capacity four times larger than today's capacity. For example, five gigawatts of utility-scale solar generation must be built every year for the next 20 years to meet these targets — a rate approximately five times faster than today's trajectory.

An analysis from the Lawrence Berkeley National Lab showed that the interconnection process can take up to 3 years. The study noted that excessive environmental review and frivolous legal challenges are a significant contributor to that delay.

The Governor's proposal outlines a path to prioritize and streamline the permitting and construction of this much-needed modern infrastructure to deliver clean energy, the CalChamber said. Importantly, the proposal also acknowledges the significant hurdle that project developers face with regards to permitting and construction of critically needed energy projects — and does so in a way that does not jeopardize the environment, jobs or the state's economy.

"By streamlining the approval processes and providing adequate resources for the construction of energy infrastructure, California can increase the state's capacity for renewable energy generation and storage to better meet anticipated demand," Barrera said. "This in turn will ensure a reliable supply of electricity for a growing economy and our residents and businesses."

As a part of the clean energy infrastructure package, the CalChamber also encouraged the Administration and Legislature to include streamlining project development for hydrogen infrastructure, Carbon Capture Sequestration and Utilization (CCUS) and renewable fuel projects, all of which are "needed to help California reach its climate goals and all of which are hindered by excessive environmental review, frivolous litigation, and inefficient 'green tape.'"

Initiative Helps with Water Infrastructure Challenges

Also essential for California's economic success and well-being of Californians is reliable and resilient water infrastructure. The state's water resources already face numerous challenges, including droughts, import restrictions, aging infrastructure, and growing demand across the state from competing interests.

According to state estimates, without a dedicated effort to improve our infrastructure, California may lose up to 10% of its water supplies over the coming decades. The Governor's water action plan, released last August, outlines a strategy to capture, recycle, desalinate and conserve more water over the next two decades to provide enough supply for nearly 8.4 million California households.

To achieve this goal, the CalChamber

supports the Governor's plan to streamline the construction of water infrastructure projects.

"Modernizing the state's water infrastructure will foster economic opportunities and job growth in related industries, such as the housing sector, where adequate water supply is a foundational requirement for any new housing supply," said Barrera.

Transportation Infrastructure Requires Modernization

As noted by the California Air Resources Board, a wholesale transformation of the transportation sector is vital to meet the state's proposed GHG emission reduction targets.

Currently, California's transportation sector accounts for about 40% of the state's GHG emissions. California can meet its own targets to decarbonize the economy, including addressing transportation's contributions to GHG emissions, only if the construction of transportation infrastructure (including electric vehicle charging stations, renewable fuels and hydrogen infrastructure) is expedited, the CalChamber emphasized.

CEQA Reforms

The CalChamber also expressed support of efforts to streamline the California Environmental Quality Act (CEQA) for the types of projects identified in the infrastructure initiative and added that the Newsom Administration should also consider additional reforms aimed more directly at the construction of critically needed housing.

"While CEQA is designed to protect the environment, the current process is overly burdensome, lengthy and too easily abused. For too long, special interest groups have weaponized CEQA to delay, scale back, or halt projects altogether for reasons unrelated to the environment," said Barrera. "Streamlining CEQA for clean energy, water and transportation infrastructure, as well as more directly for the construction of new housing, can be achieved with environmental protections that help to restore the statute's original intent."

Economic Analyses Assess Job Loss, Budget Impact of Job Killer Bills

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increased labor costs brought on by SB 616 will inevitably either be passed on to consumers as higher prices for goods and services, or force employers to reduce jobs or cut wages or other benefits.

The economic analysis of SB 616 confirms the CalChamber's assertion.

The primary drivers of the job losses and reduced state taxes are lost worker productivity resulting from increased sick days, and workforce reductions from employers having to compensate workers the same despite decreased work productivity.

Numerous Existing Leave Mandates

Despite the economic struggles that businesses have faced recently, the number of overlapping leaves has grown over the last few years and continues to grow.

While one more paid benefit may not seem significant in isolation, SB 616 must be viewed in the context of all California's other leaves and paid benefits, especially the special paid leaves required from 2020 through 2023 due to COVID, the CalChamber said in a letter sent to legislators.

Below is a sample of just *some* of the leaves required by law:

• **Cal/OSHA Non-Emergency COVID Regulation:** Effective February 2023, employers still must exclude from

the workplace workers from the workplace who test positive for COVID-19, which is in effect mandatory unpaid leave.

• **Workers' Compensation:** Expanded presumption for COVID-19 until January 1, 2024 so that employees may be entitled to paid leave and benefits under the workers' compensation system.

• **California Family Rights Act (CFRA):** Grants 12-week leave for the employee's own illness or to care for a family member. CFRA was expanded twice in the last two years: in 2020 to apply to small business and to cover additional family members so that it no longer runs concurrently with the federal Family and Medical Leave Act (FMLA) and in 2022 to cover non-family members of the employee's choosing. Employees can use this leave in smaller one- to two-hour increments if they so choose.

• **Family and Medical Leave Act:** Grants 12-week leave for the employee's own illness or to care for a family member.

• **Pregnancy disability leave:** Grants 4 months of leave.

• **Bereavement leave:** Effective 2023, employees can take up to 5 days of leave if there is a death of a family member. There is a bill this year to create a second bereavement leave related to fertility and children.

• **School/Child Care leave:** Expanded in 2016 so that employees can take up to 40 hours per year to care for a child whose school or child care provider is unavailable, enroll a child in school or child care, or participate in school or child care activities

• **School Appearance leave:** Uncapped leave for an employee who needs to take time off to appear at school due to a student disciplinary action.

• **Military Service leave:** Uncapped leave provided for military personnel; benefits must continue for at least 30 days. Ten days of leave for military spouses.

• **Drug Rehabilitation/Adult Literacy classes:** Uncapped leave for employees who wish to participate in alcohol or drug rehabilitation programs or adult literacy programs.

• **Organ and Bone Marrow Donor leave:** Mandates 30 days paid leave and 30 additional days of unpaid leave.

This list also does not include local ordinances that have broader paid and unpaid leave requirements than those listed above.

SB 616 passed the Senate last week and awaits assignment to a policy committee in the Assembly.

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intermittent leave and works some days in the workweek and takes other days off for CFRA/FMLA leave in the same workweek, then only those days taken for CFRA/FMLA leave will count and the day off for the holiday will not count.

If the employer scheduled the employee to work on the holiday and the employee does not work the holiday for CFRA/FMLA reasons, then the employer may deduct that day from the employee's leave bank.

Opinion Letter

The U.S. Department of Labor (DOL) reinforced this position in a recent [opinion letter](#) responding to a question whether we should consider the workweek in which a holiday falls to be a shortened workweek for intermittent tracking.

In this case, if an employee works two days during the week and uses two days of leave, the employer wanted clarification if it would be a half week of leave instead of two-fifths of a week because of the shortened week.

The DOL declined to follow the reasoning because the regulations clearly state employers should track intermittent leave based on the actual leave taken, not by any artificially shortened workweeks due to holidays.

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.

CalChamber-Sponsored Seminars/Trade Shows

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Select USA San Francisco Spin-Off Program. GlobalSF and QB3. June 30, Berkeley. info@globalsf.biz.
Trade Mission to Africa. Global Diversity Trade Initiative. August 6–15, South

Africa, Ghana and Nigeria (optional stop). eve.lerman@trade.gov.
The Green Expo 2023. The Green Expo and International Environmental Congress of the Consejo Nacional de Industriales Ecologistas (CONIECO).

September 5–7, Mexico City. 55-1087-1650.
Smart City Expo World Congress (SCEWC). Smart City Expo World Congress. November 7–9, Barcelona, Spain. (704) 248-6875.

Newest Job Killers Target Grocery Workers, Tax Rates

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This requirement could force the successor grocer to rehire employees dismissed for cause.

Private Right of Action

AB 647 creates a private right of action by granting employees, collective bargaining representatives and nonprofit corporations the right to bring action in superior court for violations of an employee's right.

The bill has a broad list of remedies including hiring and reinstatement rights, front pay or back pay for each day during which the violation continues, the value of the benefits the employee would have received under any benefit plans, and attorney fees and costs to any employee or employee representative.

The bill was passed by the Assembly on May 30 and will be considered next by both the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

SB 220: Corporate Tax Hike

SB 220 punishes successful Cali-

fornia companies with higher taxes in a misguided attempt to reverse the federal Tax Cuts and Jobs Act and address fiscal shortfalls.

SB 220 is being referred to as a tax break for California businesses, but that's simply not the case. The bill would decrease the corporate tax rate to 6.63% for employers making up to \$1.5 million in taxable income and these taxpayers as a group pay just 12% of all corporate income taxes in California. Taxpayers who bear the vast majority of corporate income tax liability will see their tax bill increase.

"SB 220 unnecessarily risks damaging California's economy at a time when the state needs businesses to grow," said CalChamber Policy Advocate Preston Young. "Such a policy would hurt our state's employers, employees and consumers by increasing the price of goods and services sold in California and forcing California-based companies to consider reducing in-state costs. The bill will depress business growth and employee wages in California and

amplify the state's budgetary issues."

In a June 5 letter to members of the Senate Budget and Fiscal Review Committee, Young states: "Higher taxes influence a plethora of business decisions, such as where a business will locate, how many employees they will hire and what wages they can offer. For companies that are located or would otherwise expand in California, the higher taxes from doing business in the California market will force them to seek to reduce costs elsewhere, including their presence in the state.

"SB 220 would degrade California's economic competitiveness against other states who notoriously compete to attract California's companies with a friendlier and less costly investment climate. This bill would take the exact opposite approach and unnecessarily raise the cost of doing business in California."

SB 220 awaits action by Senate Budget and Fiscal Review.



LIVE WEBINAR | JUNE 15, 2023 | 10 AM - 11:30 AM PT

Pregnant Pause: Providing Pregnancy and Child Bonding Leaves

Is your business prepared when an employee requests leave either during pregnancy or after childbirth?

Join CalChamber for an informative webinar on correctly and seamlessly managing employer requirements for providing these types of leaves.



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