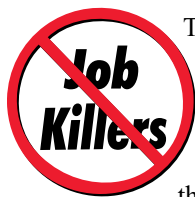


ALERT

Job Killer Bills Move Thru Senate Policy Committees



Two labor and employment bills identified as job killers by the California Chamber of Commerce won approval this week in the first Senate committees to consider them.

The Assembly Judiciary Committee approved **SB 365 (Wiener; D-San Francisco)**, which 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 Assembly Labor and Employment Committee passed **SB 723 (Durazo; D-Los Angeles)**, which imposes an onerous and stringent process for specific employers to return employees to the workforce for specified industries,

including hotels and restaurants that have been disproportionately impacted by this pandemic, and removes guardrails on existing law by making the mandate permanent and significantly broadening the applicability of the law.

SB 365

In a [letter](#) to Assembly Judiciary members, the CalChamber and a coalition of employer representatives and local chambers of commerce asserted that the true motive behind SB 365 is an attempt to severely restrict the use of arbitration agreements.

The bill incorrectly assumes that all appeals related to arbitration are meritless.

Moreover, the bill's effort to deter arbitration and single out arbitration from other types of proceedings ultimately will result in a finding that SB 365 is preempted by the Federal Arbitration Act

See Job Killer: Page 6

Manufacturing Tax Credit Expansion Moves



A California Chamber of Commerce-supported job creator bill providing an economic

incentive for manufacturers to invest in and expand production in California won approval from a Senate policy committee this week.

AB 52 (Grayson; D-Concord)

expands investment and production in California by expanding the sales and use tax exemption for the purchase of manufacturing and research and development (R&D) equipment.

The tax credit transforms the current incentive landscape, making manufacturing investment in California far more competitive and attractive.

California operational costs can challenge a manufacturer's ability to revitalize and uplift communities, but this investment will signal that the state is serious about retaining and attracting production.

California ranks amongst the highest in the nation in state and local sales tax rates. While the base state sales tax rate is 6%, the local portions of the sales tax can reach up to 10.75%.

California's economic success depends on production-driven manufacturers that serve as catalysts for building sustainable jobs reflecting the state's diversity. With increased levels of production and innovation, manufacturing

See Manufacturing Tax: Page 3

The Workplace

Cal/OSHA Indoor Heat Regulations, Status of SB 553 Workplace Violence Rules



In [Episode 178](#) of The Workplace podcast, CalChamber employment law expert Matthew Roberts sits down with CalChamber

Policy Advocate Robert Moutrie to discuss the newest developments in California's indoor heat regulations and proposed legislation, SB 553, dealing with workplace violence rules.

Indoor Heat Regulations

California has had outdoor heat protections going back a number of years, requiring employers to have a plan to deal with heat illness, Moutrie says. The state also has special high heat procedures that employers must follow when outdoor temperatures reach 95 degrees — a higher level of action in the same areas as at lower temperatures, such as providing shade and water and making sure workers get acclimated to the higher temperatures.

See Cal/OSHA Indoor: Page 4

Inside

[Small Business COVID Relief Grant: Page 3](#)

Cal/OSHA Corner

No Mention of Appliances in Wage Orders Governing Working Conditions



Mel Davis
Workplace Safety
Expert

An employee is complaining about not having enough room in the break room refrigerator for a lunch. Just what is the employer supposed to provide in the break room?

The Industrial Welfare Commission developed a series of regulations, known as Wage Orders, relating to occupational employment throughout California.

The Wage Order categories — such as transportation, agricultural, mercantile, construction, mining, entertainment, office — cover basically every occupa-

tion in California. These orders address various classifications of employees, wages and hours, per diem, working and rest provisions, temperature, as well as a multitude of other conditions with which the employer is to comply.

What is not mentioned specifically is a break room.

‘Suitable’ Place to Eat

What the Wage Orders do mention is “seats.” What the employer shall do is provide all employees with suitable seats when the nature of the work reasonably permits their use.

In addition, the orders state that suitable resting facilities will be provided in an area separate from toilet rooms and be available to employees during working hours.

The orders do stipulate that if the employees are required to eat on the premises, the employer shall designate a suitable place to eat. If it is an office

environment and work is done at a desk or similar location, that meets the criteria.

Rest Area

It should be noted that nowhere in these orders are the conveniences — snacks, fridge, microwave, coffee and other perks provided by the employer — mentioned. All that is required is to provide an area to “rest.”

I remember chipping in with other employees and buying our office refrigerator and microwave. Our break area was the conference room. If a person is concerned about food spoilage, it may behoove them to invest in a small cooler/ice chest.

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.

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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.

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.

Select USA San Francisco Spin-Off Program. GlobalSF and QB3. June 30, Berkeley. info@globalsf.biz.

Trade Mission to Africa. Global Diversity Export 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.

APEC CEO Summit 2023. National Center for APEC (Asia-Pacific Economic Cooperation). November 15–16, San Francisco. (206) 441-9022.

Small Businesses May Apply Now to Recover Costs through COVID-19 Paid Sick Leave Relief Grant Program

Eligible California small businesses may apply now for a state program that awards funds for costs incurred from the COVID-19 Supplemental Paid Sick Leave.

Under the California Small Business and Nonprofit COVID-19 Supplemental Paid Sick Leave Relief Grant Program, eligible businesses may be awarded between \$5,000–\$50,000. Funds are limited and will be awarded based on eligibility and availability of funds.

To apply, visit <https://caspsl.com/>

Program Details

Grant awards are to be used only for reimbursing COVID-19 Supplemental Paid Sick Leave provided between January 1, 2022, and December 31, 2022.

Applicants must provide proof of employee payroll records that verify all COVID-19 Supplemental Paid Sick Leave provided by the applicant. The amount provided in the records also must match that of the grant request.



For eligibility restrictions, and a list of documents required to apply for the program, visit <https://caspsl.com/faqs/>.

Upcoming Webinars

On behalf of the California Office of the Small Business Advocate, Lendistry

is hosting a series of webinar sessions where representatives will walk applicants through the program guidelines and do a live demo of the application process.

To view available dates and sign up for a webinar, visit <https://caspsl.com/webinars/>.

Manufacturing Tax Credit Expansion Moves

From Page 1

ing will revitalize a diverse workforce and grow technical skills that lift the state's economy and the families that live here.

AB 52 would promote increased production and ensure the growth of high-wage jobs for various skill levels and backgrounds in manufacturing firms, helping to cultivate and foster future manufacturing growth in the state's historically diverse regional economies.

The tax credit will bring California

in line with 38 other states which cover the taxes on qualified manufacturing purchases. With tremendous economic ripple effects, every manufacturing job supports at least 2.5 other jobs.

Manufacturers throughout the state have stepped up and led efforts to keep supply chains solid and resilient, but manufacturing growth in California is still outpaced by the rest of the country. The state lost 7.1% of its manufacturing job base over the last decade and has attracted no more than 1% of the coun-

try's large manufacturing investments in the same period.

AB 52 will help local manufacturers compete in a domestic and global economy that operates on razor-thin margins, and it will lead to growth in innovation, production of wide-ranging goods, and an increase in high-quality jobs.

AB 52 won approval on June 14 from the Senate Governance and Finance Committee. It will be considered next by the Senate Appropriations Committee.

Staff Contact: Preston Young



CalChamber Member Feedback

"CalChamber moves quickly to keep legislators informed about employers' concerns when it comes to proposed new laws and regulations. They communicate commonsense solutions to those at the State Capitol."

Kevin P. Kelly
President and Chief Executive Officer
West Valley Construction Company, Inc.

Cal/OSHA Indoor Heat Regulations and Where Things Stand with SB 553

From Page 1

This year, the California Division of Occupational Safety and Health (Cal/OSHA), which handles the implementation and enforcement of workplace safety rules, has been hard at work on proposed indoor heat rules, Roberts says.

What are these rules and what's their status, Roberts asks Moutrie?

Moutrie explains that the indoor heat regulation package finished its 45-day comment period in May and Cal/OSHA is now in the late stage of rulemaking. The exact timeline is not yet known, but Cal/OSHA experts are now reviewing comments submitted by the CalChamber and others. Cal/OSHA staff will then decide whether changes are necessary and, if so, make them before they put the package before the Cal/OSHA board for a vote. The vote may take place later this year, but it also could be stretched as far as early 2024.

The proposed rules would establish a default trigger starting at 82 degrees, meaning that if a workplace is below 82 degrees, the regulation wouldn't take effect. Once the temperature in a workplace rises above 82 degrees, the regulation will go into effect. The issue with this trigger, Moutrie says, is that it doesn't take duration into consideration. So even if a workplace goes over 82 degrees for one minute, compliance obligations would be triggered.

Another concern is that a worker could transition between indoor and outdoor heat regulations for momentary tasks. For example, Roberts says, if an outdoor employee goes into an enclosed tool shed to grab a shovel, and the shed space is hotter than 82 degrees, it will trigger the indoor heat rule.

The indoor heat regulations contain some rules similar to the outdoor heat regulations. For example, employers will also have to create a heat illness prevention plan, train their employees on it, and ensure that water is accessible, Moutrie explains.

One important distinction, however, is that instead of providing a shaded space, employers will need to provide a cooldown space or room.

This requirement will create a big issue for small businesses, particularly restaurants and smaller restaurants, because a spare room may not be available, Moutrie points out. Cal/OSHA makes an accommodation by allowing the cooldown space to be an outdoor shaded area, but this still may be an issue where an employer does not have control of the space outside their premises.

"One of the things I expect to see when this passes is you're going to see more restaurants, especially the kind of small mom-and-pop renting space in a building ones, setting up tents just outside of their restaurants to create cooldown spaces on hot days," Moutrie says.

Workplace Violence

In 2017, Cal/OSHA created rules on workplace violence standards specific for hospitals and health care industries, which had unique workplace violence issues arising, Roberts explains. This year, California legislators are attempting to establish a workplace violence standard that would apply to all businesses via SB 553 (Cortese; D-San Jose).

The problem with this proposal is it essentially takes the hospital standard and applies it to every business in the state — even down to those with just one employee, Moutrie says.

This is concerning because it's not feasible for a small business to do what a hospital does. Hospitals may have upwards of 1,000 employees, with access to lawyers and doctors and significant financial resources. It's not feasible to expect a small business, such as a food truck or small nonprofit, to meet the same standards as hospitals, he stresses.

Under SB 553, employers will need to create detailed logs of workplace

violence incidents, create a workplace violence plan, train employees on how to deal with the plan, and conduct annual reviews on a per location basis. There also are other provisions that may be costly for small businesses, such as a requirement to make individual psychological counseling available to anyone affected by workplace violence.

Under the proposal, workplace violence would include a threat of violence, any physical contact, and even waving around something that could be deemed a weapon, whether the individual uses it or not. Even if someone is holding a broken bottle, this could be deemed workplace violence and the employer would have to offer psychological counseling for everyone who sees or experiences this, Moutrie explains.

While a hospital can afford to offer this, a small business cannot. Cal/OSHA also is drafting a workplace violence standard and it also agreed that the standard which applies to hospitals is not feasible for every industry, he says.

There are several other requirements that SB 553 imposes that would burden small businesses, such as changing where walls are, changing sightlines, installing cameras, installing alarms, hiring more staff, and having staff specifically ready and waiting to be able to respond to a workplace violence event.

If passed, SB 553 would cut off Cal/OSHA's rulemaking process and Cal/OSHA would be compelled to use SB 553's standard, Moutrie explains. Moreover, if SB 553 passes, it could be a long time before Cal/OSHA attempts to amend the regulations.

"I would not expect Cal/OSHA to go back and touch this again for a decade or more if it's passed in this form," he says. In other words, if SB 553 is passed, employers should not expect it to be cleaned up any time soon.

Legislature Should Embrace What's Good for California: Infrastructure Reforms



Everybody talks about fixing California's infrastructure; now we have a

chance to do something about it.

Last month Governor Newsom proposed a comprehensive package to streamline the permitting of critical energy, water, and transportation projects. The Legislature should lose no time in reviewing and approving these important reforms.

The Governor has called this "the most ambitious effort to cut red tape and streamline regulations in half a century. It's time to make the most out of taxpayer dollars and deliver results while creating hundreds of thousands of good jobs."

Critical Public Works

It's become painfully clear that critical public works are stretched to the breaking point. Californians suffer under predictable threats of electricity shortages in the summer, water shortages during a drought, and traffic congestion year-round. Solving these challenges is not for lack of money, technology, or skilled workers. The problem is the endless opportunities to choke projects with red tape and no clear deadlines for getting the job done.

No-one disagrees that California's unparalleled climate change goals cannot be realized under the state's current permitting trajectory. California released the world's first plan to achieve carbon neutrality by 2045, to reduce greenhouse gas (GHG) emissions from all sectors of the economy. 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.

Bringing Projects On-Line

Turns out setting the goals was the easy part. Now is the time for the Legislature to add a "no-excuses" clause to those goals: giving the tools to the Administration to bring clean energy projects on-line to meet the law's deadlines, and ensure California residents and

our economic base will have the clean energy our elected leaders have promised.

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.

Commentary

By Greg Bielli and
Michael P. Quigley

Path to Prioritizing

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 — and does so in a way that does not jeopardize the environment, jobs or the state's economy. The status quo is simply unacceptable.

As the Governor put it to a meeting of business leaders about the prospect of deploying tens of billions in new federal infrastructure funds: the State is ready, but "are we going to screw it up by being consumed by paralysis and process?"

Reliable Water

Also essential for the economic success and well-being of Californians is reliable water infrastructure. The state's water resources already face challenges including droughts, import restrictions, aging infrastructure, and growing demand across the state from competing interests. The most likely next addition to the State Water Project, the Sites Reservoir Project, has been going through the permitting process since 2010 and is still years away from construction.

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. The proposed streamlining initiative would boost the state's ability to deliver these important projects.

Improving Mobility, Reducing Emissions

Achieving the twin goals of improving mobility and reducing GHG emissions from the transportation sector will also require quicker approval of new highway and transit projects, including charging stations, and highway safety and operations improvements that will create thousands of family-supporting middle-class jobs.

The California Environmental Quality Act (CEQA) is a notoriously difficult and divisive issue for development in the state. But streamlining CEQA for clean energy, water, and transportation infrastructure, can be achieved with environmental protections that help to restore the statute's original intent.

Eliminating Excessive Paperwork

Even while the Legislature is currently considering several major changes to CEQA, the Governor has proposed a major reform to eliminate excessive paperwork burdens and unnecessary review for major state infrastructure projects.

California's need to upgrade and expand our energy, water and transportation infrastructure has never been greater. Nor could the opportunity be more ripe to accelerate building our infrastructure, with \$180 billion in federal and state investment awaiting plans, permits and political will.

In the spirit of streamlining the permit process, the Legislature should act quickly to approve the long-needed, comprehensive infrastructure reforms proposed by the Governor.

Greg Bielli is chair of the California Chamber of Commerce Board of Directors and president and CEO of Tejon Ranch Company; Michael P. Quigley is executive director of the California Alliance for Jobs.

Job Killer Bills Move Thru Senate Policy Committees

From Page 1

(FAA), as the Ninth Circuit recently did by striking down another attempt at limiting arbitration — AB 51 (Lorena Gonzalez; D-San Diego) from 2019.

Allowing a court the discretion to continue with the underlying trial while an appeal regarding a motion to compel arbitration is pending eliminates the entire purpose of arbitration and runs afoul of the FAA, the CalChamber argued.

SB 365 also would incentivize forum shopping even more than what occurs now, with trial attorneys filing claims in venues where they believe judges are more inclined to deny the current law's requirement to stay a case during an appeal regarding the enforceability of an arbitration agreement.

SB 365 will lead to additional litigation and more money in the pockets of trial attorneys, which will increase the cost of doing business in California and exacerbate the ongoing affordability crisis.

A recent [economic analysis](#) projected that SB 365 could cause California to lose up to 18,000 jobs and up to \$129 million in state taxes.

SB 723

A coalition of employer groups and local chambers of commerce explained in a [letter](#) to Assembly Labor and Employment members that SB 723, without justification, permanently removes business flexibility and autonomy over hiring decisions.

It also will slow hiring and add administrative costs to a hospitality industry still grappling with the impacts of the pandemic.

In 2020, Governor Gavin Newsom vetoed AB 3216 (Kalra; D-San Jose), which proposed a right to recall for hospitality industry workers during any state of emergency. The Governor's veto message pointed to the burden the bill would have placed on struggling industries and its failure to narrowly tailor its provisions to COVID-19.

As part of the budget process the following year, negotiations between the Legislature, administration and business community led to a narrower version of a right to recall, SB 93. Tied to the unique circumstances of the pandemic, SB 93 is scheduled to sunset on December 31, 2024.

The CalChamber coalition argues that

the COVID-19 era policy should sunset as agreed. The impact of SB 93 demonstrates that SB 723 will bog down hiring and undermine basic management of a business, seeking to micromanage forever the rehiring process for affected businesses, thereby increasing employer costs.

Key Votes

• **SB 365** passed Assembly Judiciary on June 13, 8-3:

Ayes: Connolly (D-San Rafael), Haney (D-San Francisco), Maienschein (D-San Diego), Pacheco (D-Downey), Papan (D-San Mateo), Reyes (D-San Bernardino), Robert Rivas (D-Salinas).

Noes: Dixon (R-Newport Beach), Essayli (R-Corona), Sanchez (R-Rancho Santa Margarita).

• **SB 723** passed Assembly Labor and Employment on June 14, 5-2:

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), Vince Fong (R-Bakersfield).

Both bills will be considered next by the Assembly Appropriations Committee.



TWO HALF-DAYS | 9 AM - 12:30 PM PT

HR Boot Camp Virtual Seminar

New to HR or in need of a refresher course? CalChamber's virtual HR Boot Camp keeps you in step with California's complex employment laws and how they can affect your workplace.

You'll learn about key employment topics like hiring and paying employees, providing meal and rest breaks, and much more.



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