

ALERT

Governor Vetoes SB 799

Emphasizes Potential Increase to State's UI Debt



Governor Gavin Newsom has vetoed SB 799, one of the California Chamber of Commerce's hardest fought job killer bills.

The proposal would have made striking employees eligible for unemployment compensation after a strike has continued for more than two weeks.

The CalChamber has led a broad coalition of more than 110 businesses, associations and local chambers of commerce urging the Governor to veto **SB 799 (Portantino; D-Burbank)**. A "priority bill" for the labor movement, the consequences of this radical change in unemployment eligibility would have been profound.

Unemployment Insurance Debt

The Governor emphasized that "expansion of eligibility for UI benefits could increase California's outstanding federal UI debt," which he projected to be

nearly \$20 billion by the end of the year, "significantly increasing taxes on employers." The Governor also noted that the state treasury is responsible for the interest payments on the UI loan and to date has paid \$362.7 million in interest with another \$302 million due this month."

"Now is not the time to increase costs or incur this sizable debt," said the Governor.

"We applaud Governor Newsom for his swift and sure decision on SB 799," said Jennifer Barrera, CalChamber president and CEO. "He correctly saw that we simply cannot afford to add a new program and new costs this year."

The CalChamber had argued that a new mandate to support striking workers would add millions in new liabilities for the Unemployment Insurance (UI) Fund. If SB 799 had been in effect the previous 12 months, it would have added about \$215 million to the obligations of the UI Trust Fund over this time and would be expected

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Governor Signs Paid Sick Leave Expansion Job Killer Bill



Governor Gavin Newsom has signed a California Chamber of Commerce **job killer** bill that will impose significant costs on all California businesses by increasing

the number of paid sick days employers are required to provide workers.

SB 616 (Gonzalez; D-Long Beach) disproportionately affects small businesses, which cannot spread additional work among many employees, and can ill afford the increased cost of additional paid sick leave days.

In a statement on October 4, CalChamber President and CEO Jennifer Barrera said many businesses in California already provide more than three days of paid sick leave and can afford to do so. Small businesses, however, operate on very slim margins.

"Our concern is that far too many small employers simply cannot absorb this new cost, especially when viewed in context of all of California's other leaves and paid benefits, and they will have to reduce jobs, cut wages, or raise consumer prices to deal with this mandate," she said. "Small businesses are crucial to our local communities and the overall success of our economy. Continuing to add costs to their price of doing business creates a threat to California's long-term competitiveness."

Expansion to 5 Paid Sick Days

SB 616 amends the Healthy Workplaces, Healthy Families Act to increase

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U.S. Senator Dianne Feinstein Remembered as Consequential Leader, California Champion



U.S. Senator
Dianne Feinstein

U.S. Senator Dianne Feinstein, who represented California for more than 30 years, is being remembered as a skillful legislator, fierce advocate for California, and trailblazer for women in politics.

The California Chamber of Commerce greatly appreciates Senator Feinstein's

steadfast leadership and her understanding of issues affecting the business community. Feinstein, who was 90 years old, passed away September 28 in her Washington D.C. home.

CalChamber President and CEO Jennifer Barrera issued the following statement on September 29:

"Today, we join the many voices mourning the passing of Senator Dianne Feinstein. She leaves an incredible legacy of leadership and dedication to California and our country and we are grateful for her service.

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Labor Law Corner

Late Payment of Wages: Per Worker Penalty Escalates with 2nd Violation



David Leporiere
Employment Law
Expert

Our payroll company had some issues a couple of weeks ago, and as a result we ended up paying our employees seven days after the regular payday. Do we owe each employee an additional seven days of pay as a penalty for the late payment of their wages?

The short answer is “no,” you are not responsible to pay each of your employees seven days of pay because you were late paying wages during their employment. You are, however, subject

to a different penalty for late payment of wages during employment.

If you fail to pay all wages due to an employee at the time the employee leaves your employment, you would be subject to a “waiting time penalty” equivalent to one day of pay for each day the employer delays in getting all of the wages due to the employee. California Labor Code Section 203 requires the waiting time penalty, but caps the penalty at 30 days of wages.

In your situation, the employer failed to pay wages to its employees during their employment. Under these circumstances, California Labor Code Section 210 requires a penalty of \$100 (per employee) for the first violation, and \$200, plus 25% of the monies withheld (per employee) for each subsequent violation.

Before 2020, only the state was entitled to receive these penalties (or an employee could pursue them through a Private Attorneys General Act (PAGA) claim), but starting in 2020, employees were given a private right of action to

receive these penalties by filing a claim under Labor Code Section 98 with the California Labor Commissioner’s office.

Hopefully, this is the first and last time your company has failed to pay its employees during the period of their employment. Even if your company can afford the \$100 per employee penalty, as soon as you have had a second violation, the penalties ratchet up with either the state or the employee being allowed to recover a percentage of the monies withheld.

If you have not already addressed the situation with your payroll company, it is important that you take steps now to protect your company from further penalties.

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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CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Labor and Employment

SB 553 — California’s New Workplace Violence Standards. CalChamber.
November 2, 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.

2023 Taiwan Innotech Expo. Taiwan External Trade Development Council (TAITRA) and Industrial Technology Research Institute (ITRI). October 12–14, Taiwan. (415) 362-7680.

EXIM 2023 Annual Conference.

Export-Import Bank of the U.S. October 19–20, Washington, D.C. (800) 565-3946.

Build Expo Greece. Rota Exhibitions Greece. October 19–22, Athens, Greece. (415) 775-2102.

Canada Hot Sauce Mission and Trade Show. Western U.S. Agricultural Trade Association. October 22–26, Toronto, Canada. export@wusata.org.
Smart City Expo World Congress

(SCEWC). Smart City Expo World Congress. November 7–9, Barcelona, Spain. (704) 248-6875.

Cambodia Business Expo. Cambodian Chamber in California. November 9, Long Beach. normarikawa@gmail.com.

MEDICA CEO Program. Governor’s Office of Business and Economic Development (GO-Biz). November 13–16, Düsseldorf. patricia.utterback@gobiz.ca.gov.

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

Public Affairs Conference:
October 24–25, Laguna Niguel

Next Alert: October 20

The Workplace

Podcast Examines AI's Workplace Opportunities, Challenges



In **Episode 186** of The Workplace podcast, CalChamber Associate General Counsel Matthew Roberts and Peter Bittner,

award-winning multimedia journalist and artificial intelligence (AI) consultant, discuss the growing presence of AI in the workplace, exploring the various ways it is transforming business operations.

AI's Expansion in Workplace

Artificial intelligence is rapidly expanding in workplaces across the world, with a recent Salesforce global survey revealing that two-thirds of managers are considering or implementing generative AI in their organizations, Bittner says. It's a massive transformation that is reshaping business models across various industries.

Rather than being fearful of the technology, the Salesforce study also found that more workers are excited about the use of AI in the workplace and believe businesses should prioritize AI skill development.

Positive Impacts

AI has many potential uses in the workplace. The technology has the ability to automate repetitive tasks, minimize human error, and continuously adapt and improve.

A recent study by Boston Consulting Group, in collaboration with Harvard, University of Pennsylvania and Massachusetts Institute of Technology professors, found that workers who utilized AI completed tasks more efficiently, achiev-

ing a 12% increase in number of tasks completed, producing 40% higher quality results, and accomplishing tasks 25% faster, Bittner says.

Downsides, Challenges of AI

Despite its potential benefits, AI does present certain downsides and challenges that businesses must address, Bittner says.

He points out there are concerns about job displacement, particularly in roles involving routine and repetitive tasks. The types of jobs most likely to be affected by this are administrative, call center roles, entry-level positions, and software engineering, among others.

While AI can automate various functions, a human layer remains essential for quality control and applying judgment, Bittner stresses.

Another problem with AI right now is that it's not always reliable, and may still be wonky and unpredictable, he says. There also are concerns surrounding security vulnerabilities as cyber hackers are also able to use AI.

Lastly, AI can reinforce societal biases, hurt diversity, equity and inclusion (DEI) efforts and can place businesses in legal jeopardy, Bittner says.

Legal, Compliance Considerations

Roberts agrees that AI can bring up legal and compliance business issues, stressing that "humans still need to be around AI."

The federal Equal Employment Opportunity Commission (EEOC), for example, executed a settlement against an employer for AI practices that ended up unlawfully screening out older workers.

Bittner adds that last month, Governor Gavin Newsom issued an executive order

that requires most major state agencies to review the potential threats and opportunities AI presents, and issue best practices. Nationally, President Joseph Biden held an AI Summit, and it remains to be seen what will be coming down the pipeline.

At the moment, employers should look at the California Consumer Privacy Act. Biometric data is critically important and is a pitfall of AI-powered customer screening and hiring tools, Bittner says.

A recent Illinois lawsuit deals with informed consent during the hiring process. It involves a video interview tool that uses sophisticated machine learning algorithms to analyze body language, intonation, and eye movement to assess the confidence and capabilities of potential employees.

"It's definitely a very shaky territory right now," he says. "There's a lot of evidence that shows that these types of AI systems reinforce bias and discrimination in screening processes... These are hot legal potatoes to juggle."

Privacy Concerns, Liability

There also are privacy concerns related to AI's collection and manipulation of data.

Bittner says that AI enables data analysis on an unimaginable scale. AI has the ability to manipulate, analyze, slice and dice, share, integrate, and synthesize datasets to help locate potential employees, produce sales leads, and create proprietary data. But this does open up questions about sharing data with third party systems or outside entities. Who owns the data? Whose servers is this data on?

"These are some questions that are more important than ever now. And in

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CalChamber Member Feedback

"We appreciate the continued leadership from CalChamber to support companies in the communities we serve across the state. Their efforts enable continued growth and foster innovation, benefiting every Californian."

Janet W. Lamkin
Senior Vice President, Global Market and Community Innovation
United Airlines

Revised California Criminal History Regulations Took Effect October 1



Revised regulations about the use of criminal history in employment decisions under

California's Fair Chance Act took effect on October 1.

The revised regulations adopted by the California Civil Rights Council (the rulemaking body for the California Civil Rights Department) were approved by the Office of Administrative Law in July 2023.

Employers should look at their criminal background check procedures and make any changes necessary to be sure the procedures comply with the latest rule revisions. Below is a brief update on what employers should keep in mind.

Clarifications

The good news is the revised regulations don't change the existing rules' fundamental framework about the consideration of criminal history; rather, they add clarifications, examples and additional considerations to the existing rules — placing particular emphasis on the individualized assessment process and consideration of the applicant's response, including the types of rehabilitation and mitigating circumstances evidence.

Under the Fair Chance Act, California employers with five or more employees may not ask about criminal history at any point before making a conditional job offer. In addition to prohibiting any related questions on job applications, the revised regulations add that employers may not publish any statements in advertisements or job postings that suggest they won't hire anyone with a criminal conviction — for example, "applicants must have a clean record" or "no felons."

Individualized Assessment

The revised regulations also expand on the individualized assessment process. Under the law, after a conditional job offer is made and a background check reveals an applicant's criminal history, employers must engage in an individualized assessment to determine if the conviction has a direct adverse effect on the applicant's ability to perform their job duties.

Existing regulations direct employers to consider, at a minimum, the following three factors:

- The nature and gravity of the criminal offense;
- The time elapsed since conviction; and
- The nature of the position.

The revised regulations add potential considerations for each factor above. For example, the regulations specify that consideration of the nature and gravity of the criminal offense can include the applicant's specific personal conduct that led to the conviction, whether the harm was to property or people, the type of harm, the context of the crime and other considerations. The other two factors also have additional criteria for employers to consider.

After completing the individualized assessment, an employer may consider withdrawing the conditional job offer and send the applicant a preliminary notice to that effect with information about the applicant's right to respond and submit information challenging the conviction history and/or submitting evidence of rehabilitation or mitigating circumstance.

The revised regulations provide more examples of the types of evidence applicants may provide, including letters of reference, documentation of completed programs (rehabilitation, school, counseling, community service, etc.), police reports, documentation of a disability and others.

Reassessment

If an applicant submits a timely response to an employer's preliminary notice of withdrawal, employers must consider all information submitted by the applicant.

The revised regulations expand the context around this reassessment, encouraging employers to consider additional factors such as the applicant's conduct during incarceration, community service and engagement since the conviction or completion of the sentence, and other rehabilitative efforts or mitigating factors.

Existing Employees

Notably, the revised regulations also clarify that the Fair Chance Act not only applies to outside applicants but also to existing employees who are seeking a different position with their current employer, as well as those who are subject to a criminal history screening during employment due to a change in management or policy.

Employers should review their criminal background check procedures to ensure compliance with the regulations — paying particular attention to how they conduct individualized assessments and review any evidence and/or response submitted by the applicant during the process.

Consult with legal counsel before making a final decision not to hire an applicant if there's not a clear conflict between a criminal conviction and the position's specific duties.

CalChamber members can use the [Notice of Preliminary Decision to Withdraw Employment Offer – Criminal History Only and Criminal Background Screening Checklist on HRCalifornia](#).

Not a member? Learn how to power your business with a [CalChamber membership](#).

Staff Contact: James Ward

Podcast Examines AI's Workplace Opportunities, Challenges

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2023, it pays to read the fine print, and ask very critical questions of vendors and to dig into the nitty gritty," he tells Roberts.

Takeaways

In closing the podcast, Bittner offers several key takeaways for business owners and executives. He urges employers to:

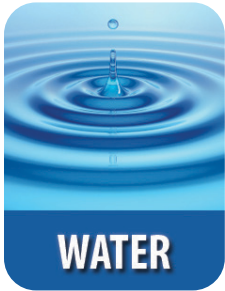
- Stay informed and learn about AI tools relevant to your industry and operations.
- Involve stakeholders, including employees, in the decision-making process.
- Be cautious but not overly fearful of AI's potential.
- Align AI initiatives with your company's mission and values.

- Consider ongoing training to maximize the benefits of AI.

- Be transparent with customers.

Bittner also stresses that businesses should seek legal counsel to navigate the evolving legal and compliance environment. As soon as state and national laws are released, it will be critical to get legal advice as soon as possible.

State Water Board Moves Ahead on Draft Plan to Stabilize Water Supply



The State Water Resources Control Board recently took the newest steps in managing water supply and water quality in the Delta region.

On September 28, the State Water Board released its

staff report and substitute environmental document (SED) for the Sacramento/Delta watershed update to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan), which evaluates the environmental impacts of the Bay-Delta Plan and its proposed program of implementation. This is a key milestone for a plan that has significant impacts on water supply throughout the state.

Healthy Rivers

The release of the draft SED is the first major regulatory action on the Bay-Delta Plan in about five years.

The initial proposed update introduced the concept of state-imposed minimum “unimpaired instream flows,” and ultimately led to the conception of a voluntary

program in which water suppliers would voluntarily dedicate flows to instream uses and make other improvements for the benefit of the environment. That effort, originally called the Voluntary Agreements and now called the Healthy Rivers Agreements, is an important means of increasing stability in water supply while supporting important environmental and habitat needs.

The SED fully evaluates the Healthy Rivers program as a means to implement the requirements in the updated Bay-Delta Plan. The California Chamber of Commerce is pleased to see that the Healthy Rivers Agreements have been included in this process. It is an important part of ensuring that the Bay-Delta Plan can achieve its goals without disrupting water supplies for about two-thirds of California.

Systemwide Benefits

The Healthy Rivers Agreements go beyond simply adding flow to streams and reach the underlying ecosystem functions needed to restore fish populations. Scientific study on the matter shows that a combination of habitat and flow provides substantial systemwide benefits.

In addition, this alternative minimizes negative impacts on the economy

while achieving ecosystem benefits. The increased stability and predictability under the Healthy Rivers will protect economic drivers, like the agricultural industry, as well as urban water uses.

Finally, the Healthy Rivers alternative creates a structure for collaboration and flexible adaptation as we continue to experience less predictable hydrologic conditions. It allows stakeholders to work together to overcome water supply challenges.

The CalChamber appreciates the hard work of the State Water Board staff in bringing forward an SED that includes the Healthy Rivers Agreements as a key part of the solution to the Delta’s challenges.

Now is the time for the state to take advantage of helpful hydrology in order to shore up California defenses when drought conditions return. Including the Healthy Rivers Agreements in the SED helps the state move toward outcomes that benefit water supply, the environment, and the economy.

The 5,000+ page SED can be found on the State Water Board website. https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html
Staff Contact: Brenda Bass

Governor Vetoes SB 799

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to grow by more than \$30 million a week given ongoing strike activity.

These estimates do not consider the likely case that SB 799 would encourage even more or longer strikes, since the cost to the union and to the worker would be subsidized by employers.

Fundamental Flaw

The bill was fundamentally flawed because striking workers are likely not entitled to unemployment compensation

under federal law. State UI law must operate in conformity and compliance with federal law, which specifically provides that unemployment compensation may only be paid to individuals who are not able to work, available to work, and actively seeking work. Unemployment insurance payments are intended to assist employees who, through no fault of their own, are forced to leave their employment. This is clearly not the case for workers who choose to join a strike.

Finally, it should be obvious that

being unemployed through no fault of one’s own is categorically different than going on strike. SB 799 hijacks the UI fund by decreeing that employed workers who temporarily refuse to work as a negotiating tactic are eligible for income support as if they lost their job through no fault of their own. Unlike the unfortunate employee who is laid off, strikers are still employed. They can return to a paying job when they choose.

CalChamber-Sponsored Seminars/Trade Shows

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2023 Cosmoprof Asia. GO-Biz. November 15–17, Hong Kong. (916) 447-7946.

Arab Health. GO-Biz. January 9–February 1, 2024. patricia.utterback@gobiz.ca.gov.

California Pavilion at the Singapore Airshow. GO-Biz. February 20–25, 2024, Singapore. (916) 447-7946.

Journey to Panama. San Diego Diplomacy Council. April 1–5, 2024, Panama. (619) 291-8105.

Hannover Messe: California Pavilion. GO-Biz. April 22–26, 2024, Hannover, Germany. patricia.utterback@gobiz.ca.gov.

Trade Winds – Europe. GO-Biz and U.S. Commercial Service. May 13–15,

2024 Istanbul, Turkey. Optional: May 9–10, 2024 Denmark or Romania; May 16–17, 2024, Poland or Italy. Register interest. patricia.utterback@gobiz.ca.gov.

Farnborough International Air Show: California Pavilion. GO-Biz. July 18–22, 2024, Farnborough, United Kingdom. patricia.utterback@gobiz.ca.gov.

U.S. Senator Dianne Feinstein Remembered as California Champion

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“Senator Feinstein was not only a trailblazer and an icon as so many have pointed out, but she was a smart, reasonable and intelligent voice advocating for California on the national stage with a tremendous amount of integrity.

“On behalf of all of us at CalChamber, we send our deepest condolences to her family and staff.”

Governor Gavin Newsom said of Senator Feinstein, “She was a political giant, whose tenacity was matched by her grace. She broke down barriers and glass ceilings, but never lost her belief

in the spirit of political cooperation. And she was a fighter — for the city, the state and the country she loved. Every race she won, she made history, but her story wasn’t just about being the first woman in a particular political office, it was what she did for California, and for America, with that power once she earned it. That’s what she should be remembered for.”

U.S. Senator Alex Padilla said, “Dianne Feinstein was a towering figure not just in modern California politics, but in the history of our state and our nation. She broke barriers throughout her career.”

Los Angeles Mayor Karen Bass added

her remembrances, saying, “Senator Feinstein was a trailblazer on whose shoulders I, and women in elected office all across America, will always stand. She worked harder than anyone I knew on Capitol Hill, and she will be remembered as one of the most effective and impactful senators in American history.”

On October 1, Governor Newsom appointed Laphonza Butler, longtime senior adviser to Vice President Kamala Harris and the president of EMILYs List, to complete Senator Feinstein’s term in the U.S. Senate. The term runs through 2024.

Governor Signs Paid Sick Leave Expansion Job Killer Bill

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the number of paid sick leave days afforded to employees from three to five.

While one more paid benefit may not seem significant in isolation, many employers will view this additional requirement in the context of the many other leaves and paid workplace benefits mandated by California. SB 616 adds to the proliferation of often overlapping leaves approved by California’s elected leaders.

Small Business in ‘Survival Mode’

Many businesses in California that can afford to offer more than three days

of sick leave are doing so, but many other employers will find it difficult to absorb that cost. According to the *San Francisco Chronicle*, many small businesses are “in survival mode” as they reel from the financial impacts of COVID-19 and rising inflation.

The new mandate will take effect even as existing problems with the usage of paid sick leave have become known. Specifically, the Healthy Workplaces, Healthy Families Act prohibits employers from requiring documentation when sick leave is used, even though local ordinances such as in Los Angeles and San

Diego allow employers to ask for reasonable documentation.

Employers have discovered employees using paid sick leave for non-sick leave-related purposes, but there is nothing they can do because otherwise the employers face an alleged violation for interfering with or discouraging the use of leave.

SB 616 will increase labor costs and these increases will inevitably either be passed on to consumers as higher prices for goods and services, or force employers to reduce jobs.



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