CalChamber

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ALERT

Bill Increasing Housing Costs Likely Dead for the Year

A California Chamber of Commerce **job killer** bill that would have exacerbated the state's housing shortage, raised residential housing prices across the board, and eliminated tens of thousands of housing production-related jobs is likely dead for the year.

The bill, **AB 2230 (Bennett; D-Ventura)**, substantially shuts down the production of housing in California by blocking the inflow of crucial capital that nearly all housing production relies on.

The Cartwright Act already protects against price fixing so expanding it as contemplated by this bill is unnecessary and will have the unintended consequence of making any return on investment a crime.

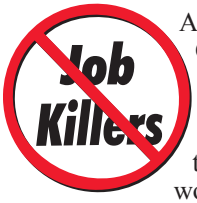
In a letter sent to legislators last week, the CalChamber pointed out that while well-intentioned, AB 2230 fundamentally misunderstands the challenges facing California's housing market by deterring critical investment in the production of housing and complicating an already-challenging regulatory environment.

The production of housing is a capital-intensive business. By expanding California's Cartwright Act, as conceived by the bill, AB 2230 will significantly risk halting the inflow of crucial capital that nearly all housing production, save for the projects self-financed by the ultra-wealthy, rely upon.

In doing so, AB 2230 not only hinders efforts to address California's acute affordability crisis, but also undermines

See Bill Increasing Housing Costs: Page 5

Senate Committee OKs Job Killer Bill Increasing UI Taxes to Pay Striking Workers



A California Chamber of Commerce **job killer** bill that will increase unemployment insurance (UI) taxes to subsidize striking workers passed a Senate committee this week.

SB 1116 (Portantino; D-Burbank) passed the Senate Labor, Public Employment and Retirement Committee on April 24 on a vote of 4-1.

The bill will allow striking workers to claim UI benefits when they choose to strike. Because the UI Fund is paid for entirely by employers, SB 1116 will effectively add more debt onto California employers. Moreover, SB 1116 will effectively force employers to subsidize strikes at completely unrelated businesses because the UI Fund's debt adds taxes for all employers, regardless of whether they've had a strike.

SB 1116 is a repeat of last year's **SB 799 (Portantino; D-Burbank)**, which was tagged as a job killer and was vetoed by Governor Gavin Newsom because of the debt it would add to California's UI Fund. This concern is even more pressing given this year's budget troubles.

Coalition Opposition

More than 120 organizations have joined the CalChamber in a coalition to oppose SB 1116. In a letter sent to legisla-

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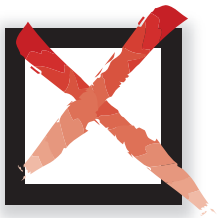
CalChamber-Opposed Bill Raising Internet Costs Stalls



A California Chamber of Commerce-**opposed** bill that would have raised internet service costs has stalled in the California Legislature and is likely dead for the year.

The bill, **SB 1179 (Durazo; D-Los Angeles)**, establishes price controls for broadband and slows broadband deployment statewide.

Preempted by Federal Law

SB 1179 would make it unlawful for any state agency to contract with an internet service provider (service provider) unless that service provider "offers affordable home internet service to all eligible households" for no more than $30 per month and under other specific terms prescribed by this bill, including advertising and call center staffing obligations.

This definition of affordability by setting a specific rate in statute is an attempt at rate regulation, which is preempted by federal law.

Will Not Solve Problem

The Affordable Connectivity Program (ACP) is a Federal Communications Commission (FCC)-administered program that helps ensure households

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Inside

Labor Law Corner

Good Process Key to Choosing Reasonable Accommodation for Disability

Matthew J. Roberts
Associate General Counsel, Labor and Employment

One of our employees with a disability requires a reasonable accommodation. May we choose the reasonable accommodation that we provide?

Perhaps. Determining what accommodations, if any, we must provide to employees with a disability is one of the more challenging personnel matters that employers will work through, largely due to the unique case-by-case nature of each request for accommodations. As with all challenging matters, successful resolution starts with a solid process.

Good Faith Interactive Process

When an employer becomes aware of an employee's need for an accommodation due to the employee's disability or medical condition, California and federal laws require employers to initiate and engage in a timely, good faith interactive process.

This interactive process allows the employer and employees to exchange information regarding the employee's essential job functions; how the disability or medical condition may conflict with those job duties; and suggested reasonable accommodation to resolve that conflict. Employers must not inquire about the employee's actual disability or medical condition.

A crucial component of this interactive process is working with the employee's health care provider to determine how the disability or medical condition affects one or more of the employee's essential job functions, as well as soliciting suggestions for reasonable accommodation that are medically advisable that will allow the employee to continue working.

For example, a health care provider may inform the employer that the bright lights and loud noises in the employee's normal workspace regularly trigger that employee's medical condition. So, the employee should be provided a work location with dim lights and little-to-no noises.

Based on this information about how the employee's medical condition affects their job duties in their ordinary workspace, the employer now knows what kinds of reasonable accommodations to consider in the process.

Providing Reasonable Accommodations

As part of the interactive process, the employee will request specific reasonable accommodations. In our example with the employee having difficulty around bright lights and loud noises, the employee may request to work remotely at home because the employee can control the workspace.

Although this may be a reasonable accommodation depending upon the employee's job duties, the employer may provide an alternative reasonable accommodation.

In this case, the employer may be able to design a workspace at the employer's facility that meets the needs of the accommodation and can choose

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CalChamber-Sponsored Seminars/Trade Shows

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

Labor and Employment

HR Boot Camp. CalChamber. May 2–3, August 22–23, Online. (800) 331-8877.

Completing Your Workplace Violence Prevention Program. CalChamber. May 16, Online. (800) 331-8877.

Leaves of Absence. CalChamber. May 30–31, August 8–9, Online. (800) 331-8877.

International Trade

World Trade Week Southern California. Los Angeles Area Chamber of Commerce. May 1, Long Beach. *cluna@lachamber.com*.

Export Documentation & Logistics Webinar Series. U.S. Department of Commerce. May 6–9, May 14–15, May 21–23, May 28, Online.

International Forum. CalChamber. May 8, Sacramento. *intlevents@calchamber.com*.

WCF Americas Summit. International Chamber of Commerce (ICC) World Chambers Federation. May 8–10, Bogotá, Colombia.

See CalChamber-Sponsored: Page 5

CalChamber Calendar

Capitol Summit:
May 8, Sacramento

International Forum:
May 8 Sacramento

ChamberPAC Advisory Committee:
May 8, Sacramento

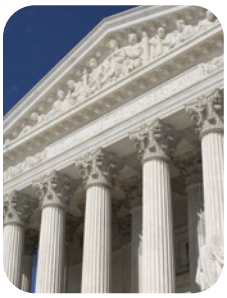
Small Business Policy Council:
May 8, Sacramento

Sacramento Host Reception/Breakfast
May 8–9, Sacramento

Board of Directors:
May 9, Sacramento

Women's Leadership Council:
May 9, Sacramento

U.S. Supreme Court Says Lateral Job Transfer Can Be Discriminatory



The U.S. Supreme Court recently issued a decision holding that a lateral job transfer can be discriminatory under Title VII when the transfer brought some harm to the employee.

The court's decision rejected some circuit courts' precedents that the employee must show the lateral transfer caused "significant" harm (*Muldrow v. City of St. Louis*, No. 22-193 (April 17, 2024)).

Background

From 2008 through 2017, Jatonya Muldrow worked as a plainclothes officer with the St. Louis Police Department in the specialized Intelligence Division. She investigated public corruption and human trafficking cases, oversaw the Gang Unit and served as head of the Gun Crimes Unit.

Her position warranted deputization as a Task Force Officer with the FBI, which granted her FBI credentials, an unmarked take-home vehicle and authority to pursue investigations outside of the city.

In 2017, the new Intelligence Division commander had Muldrow transferred out of the unit and replaced with a male police officer. Muldrow was reassigned to a uniformed job supervising the day-to-day activities of neighborhood patrol officers.

Her rank and pay remained the same in her new position, but her responsibilities, perks and schedule did not. She no longer worked with high-ranking officials as in the past, had a less consistent schedule and lost both her FBI status and the car that came with it.

Muldrow brought a sex discrimination claim under Title VII, which makes it unlawful for an employer to "fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, privileges of employment, because of such individual's … sex."

The district court granted summary judgment in favor of the St. Louis Police Department, stating that Muldrow failed to show a "significant" change in working conditions producing a "material employment disadvantage" because she experienced no change in her salary, rank or benefits; she retained a supervisory role, like her last position; and she presented no evidence that the transfer harmed her future career prospects. On appeal, the Eighth Circuit agreed, stating the transfer brought "only minor changes in working conditions."

Supreme Court Ruling

The U.S. Supreme Court rejected the Eighth Circuit's opinion, holding that an employee challenging a job transfer under Title VII must show that the transfer brought about "some harm with respect to an identifiable term or condition of employment, but the harm need not be significant."

The Court's ruling largely rested on Title VII's language above, which the Court said does not require "significant" harm. To require significance adds words to Title VII and imposes a new requirement on claimants that goes beyond what the law requires.

Employer Considerations

After this decision, employers should give more consideration to lateral transfers to ensure their policies and practices align with the law.

Specifically, employers must go beyond ensuring that someone's salary, benefits or rank remain the same when transferring positions and should determine whether other terms and conditions of employment will change, such as the employee's schedule, perks, work location or anything else that could potentially be disadvantageous in the eyes of the transferred employee.

If so, employers should consult with their legal counsel and carefully consider whether to go through with the transfer.

CalChamber members can read more about Gender, Sex, and Gender Identity and Expression Discrimination in the HR Library on *HRCalifornia*.

Not a member? Learn more about how *HRCalifornia* can help you.

Staff Contact: James Ward

Good Process Key to Choosing Reasonable Accommodation for Disability

From Page 2

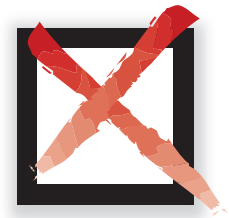
to provide this arrangement instead of agreeing to the employee's requested accommodation.

However, if the employer chooses to provide its own suggested accommodation, it must ensure the accommodation is effective. If the workspace the employer provides in this example does not resolve the conflict between the employee's disability and their job duties, the employer's duty to provide a reasonable accommodation is ongoing and the employer must return to the interactive process to continue evaluating potential accommodations, including considering the employee's requested accommodation.

Because an employer's duty to provide reasonable accommodations is ongoing, even if the accommodation appears effective at first, the employer should continue to monitor the accommodation for effectiveness for the duration it is in place to ensure compliance with California and federal laws.

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.

Burdensome Utility Ratepayer Bill Fails Again in Senate Committee



California Chamber of Commerce-**opposed** legislation imposing burdensome and redundant reporting requirements that could lead to privacy concerns for employees failed to pass a Senate committee this week.

SB 938 (Min; D-Irvine) fell one vote short of passing the Senate Energy, Utilities and Communications Committee on April 23. It was brought up for a vote only, having previously failed to pass the committee on April 16.

Hurts Ratepayers

The bill would have had a negative impact on ratepayers by preventing utilities from bringing expertise to policy-making discussions.

As outlined in a letter to committee members, SB 938 tried to restrict corporations' ability to recover expenses related to policy engagement by defining those activities as "political influence activity" and prohibiting utilities from considering them among the "above the line" costs they are allowed to recover from ratepayers.

These expenses often are necessary for these organizations to engage in policy discussions, support policies that would benefit the consumer or advocate updates to outdated regulatory provisions. Prime examples of critical engagement and policy discussion areas include demand response, energy efficiency, or California's programs to help qualifying lower-income customers by providing discounts on electricity or natural gas bills.

Privacy Concerns

SB 938 also would have raised significant privacy concerns by providing unfettered access to certain parties. The required reporting would have included a detailed list of information for each employee, at best creating the potential for competitive disadvantage for the reporting company, and at worst a direct violation of an employee's privacy.

The bill did not provide sufficient protections for managing access to what could be confidential information. Without the necessary guardrails, the information could easily have been accessed and abused.

The term "political influence activities" was ill-defined in the bill, leaving the matter open to interpretation.

Moreover, the proposed access is unnecessary because the California Public Utilities Commission (CPUC) has the authority to audit records as it sees fit to protect consumers, which is a much more appropriate approach than the unfettered access in SB 938.

The bill made no effort to conform with existing state and federal guidelines established by the CPUC and the Federal Energy Regulatory Commission (FERC).

In fact, CPUC guidelines are designed to layer on top of FERC guidelines to be consistent and create transparency. CPUC has exercised its authority to assess and enforce penalties on multiple occasions, proving that the process in place functions as it should.

Key Vote

SB 938 failed to pass Senate Energy, Utilities and Communications, which has 18 members, on a 9-3 vote on April 22:

Ayes: Becker (D-Menlo Park), Caballero (D-Merced), Durazo (D-Los Angeles), Eggman (D-Stockton), Gonzalez (D-Long Beach), Limón (D-Goleta), Min (D-Irvine), Skinner (D-Berkeley), Wahab (D-Hayward).

Noes: B. Dahle (R-Bieber), Seyarto (R-Murrieta), Wilk (R-Santa Clarita).

No vote recorded: Ashby (D-Sacramento), Bradford (D-Gardena), Dodd (D-Napa), Grove (R-Bakersfield), Newman (D-Fullerton), S. Rubio (D-Baldwin Park).

Staff Contact: Brady Van Engelen

Senate Committee OKs Bill Increasing UI Taxes to Pay Striking Workers

From Page 1

tors, the coalition pointed out that the bill creates a fundamental unfairness by forcing employers with absolutely no involvement in any strikes to pay for labor disputes in which they have no involvement.

UI Fund loans from the federal government are paid off via tax increases on all employers across the state—not just employers who have striking workers.

Though individual strikes will have different facts, all strikes are part of a negotiation between two parties. Taking money from every other employer in the state (small employers included) and forcing those uninvolved parties to pay the costs of one side of a labor dispute is profoundly unfair, the coalition stressed.

The coalition also is concerned about SB 1116's impact on California's insolvent UI Fund.

The bill would give striking workers the ability to claim unemployment after two weeks of striking — and thereby add the cost of those benefits to California's outstanding $10 billion in federal loans.

UI Fund Historic Debt

The California UI Fund is in historic debt — approximately $20 billion — due to the COVID-19 pandemic and subsequent statewide shutdown. As a result, California employers already are paying increased UI taxes pursuant to federal law and are likely to face ongoing tax increases until approximately 2032.

In addition to adding to employers' tax burdens, SB 1116 will also add to the state's General Fund obligation regarding the UI Fund. For example, in 2023–2024, the interest payment is expected to cost the state approximately $300 million — and similar payments will continue until the UI Fund returns to solvency. In the proposed 2024–2025 budget, the interest payment is estimated to rise to $331 million.

SB 1116 risks compounding UI's insolvency, which will weigh heavily on the State, California's employers, and California's unemployed.

Key Vote

Senate Labor, Public Employment and Retirement approved SB 1116 on April 24, 4-1:

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

No: Wilk (R-Santa Clarita).

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

Staff Contact: Robert Moutrie

Bill Increasing Housing Costs Likely Dead for the Year

From Page 1
the economic stability and growth of all local communities statewide.

Under AB 2230, a private party or the Attorney General may bring an action against, in this case, a developer or property manager, and any violation of the Cartwright Act, California's anti-trust law, would subject the defendant to treble damages.

Among the newly created causes of action that are a violation of the law is simply owning more than one thousand units of housing in a "geographic area." Arbitrarily applying to the housing sector the daunting enforcement mechanisms developed over decades to combat unlawful trusts is a new and extraordinary threat that will chill new activity in this sector.

Capital Essential for Home Building

Building homes requires a significant upfront investment. This includes purchasing land, securing permits, paying for materials, labor, and often the costs of infrastructure improvements and other impact fees like roads, utilities, schools and more, the CalChamber explained.

Capital is needed to cover these expenses long before any revenue from selling or renting the homes is realized by the home builder. Home building projects often span months or even years. Adequate capital ensures that home builders can manage cash flow effectively throughout the construction phase, meeting ongoing expenses until the project is completed and begins to generate income, which most often takes several years, sometimes decades.

Access to capital allows home builders to work on multiple projects simultaneously, expand their operations, and take advantage of economies of scale. This scalability can lead to more efficient production in California, which leads to more homes being built at a faster pace at lower costs.

Further, as the Great Recession revealed, the real estate market is not immune to economic downturns. Adequate capital allows home builders to weather these downturns, maintain their operations, retain staff and continue building much-needed homes.

AB 2230 also jeopardizes investments in new home building construction technologies, sustainable building practices, and innovative materials. Capital is utilized for research and development that California should incentivize to create better quality and more sustainable homes that utilize the more efficient construction processes, the CalChamber stressed.

Like any business, home building is not without great financial risks. Construction projects can have unforeseeable delays, cost overruns, labor or product shortages and market changes that can quash the production of housing in California.

Adequate capital reserves allow home builders to manage these risks without compromising the housing project's completion or quality. Home builders often rely on a mix of equity, loans, and other financing options to fund housing projects in California.

Capital strength improves their borrowing terms and access to various financing sources, ensuring that projects are not halted due to funding constraints and that the best interest rates are secured. In turn, this leads to lower costs for the production of housing in California, the CalChamber said in its letter.

"Capital is critical, not just for the physical act of building homes, but also for ensuring the financial viability and sustainability of home building operations that is vital for the long-term success of California's housing market and the state's economic growth," the CalChamber stated.

Signs that AB 2230 is unlikely to advance this year include: an April 17 policy hearing in the Assembly Judiciary Committee was canceled at the author's request, and AB 2230 was not on the schedule for the April 23 committee meeting, the last one before the April 26 deadline for bills with fiscal impacts to be sent to the Assembly Appropriations Committee for consideration.

Staff Contact: Adam Regele

CalChamber-Sponsored Seminars/Trade Shows

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U.S.-Cuba Agriculture Business Conference. U.S. Agriculture Coalition for Cuba. May 12–16, Havana, Cuba. (773) 814-2493.

Annual Export Conference. National Association of District Export Councils. May 13–14, Washington, D.C.

Trade Winds – Europe. Governor's Office of Business and Economic Development (GO-Biz) and U.S. Commercial Service. May 13–15, Istanbul, Turkey. Optional: May 9–10, Denmark or Romania; May 16–17, Poland or Italy. Register interest. *patricia.utterback@gobiz.ca.gov*.

Indo-Pacific Business Forum. U.S. Trade and Development Agency and Government of the Philippines. May 20, Livestream and Manila, Philippines. (703) 875-4357.

EXIM 2024 Annual Conference. Export-Import Bank of the United States. June 6–7, Washington, D.C. *registrar@cmpinc.net*.

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

CalChamber-Opposed Bill Raising Internet Costs Stalls

From Page 1
can afford the broadband they need for work, school, health care, and more by providing $30 monthly assistance for low-income households. Internet service providers in California participate in the ACP and offer plans with speeds up to 100 Megabits per second (Mbps) that are free or very low cost with ACP eligibility.

In a letter to legislators, the CalChamber pointed out that SB 1179 does not resolve the larger problem of continued ACP funding by the federal government. The ACP is a dollar monthly assistance amount given to constituents who qualify; this bill would not replace the monthly assistance amount given.

Service providers took part in the predecessor program, the Emergency Broadband Benefit Program, and have been leading in affordable plans for qualified individuals since before the pandemic. The problem, the CalChamber said, is not with the service providers maintaining low-income plans, it is with a federal subsidy possibly not being provided in the future in conjunction with those plans.

Direct Conflicts

Directly Conflicts with How ACP Is Administered Today

The ACP takes providers out of the process of determining program eligibility. SB 1179 would instead put the obligation of finding eligible households on the service provider.

The bill requires service providers to establish a phone number and have "dedicated" staff to enroll consumers and would require providers to "immediately convert" eligible households to an affordable plan during the month they become eligible. This would require service providers to have access to and retain a tremendous amount of personal information about consumers' income status on an ongoing basis.

Currently, service providers do not have that kind of information on consumers since providing broadband service is not dependent on the income of a household, the CalChamber explained.

Uncertainty

Uncertainty for Service Providers and State Agencies

A service provider's compliance would be determined based on vague and inconsistent broadband adoption metrics including whether an arbitrary percentage of "eligible" customers have "documented awareness" and subscribe to the service, which could be assessed at any point in time during a contract term.

In addition, the bill includes a requirement that consumers are signed up for affordable programs within 30 minutes, which is a completely arbitrary timeframe, the CalChamber noted.

Service providers contract with multiple California agencies through long-term contracts to provide facilities and/or services for emergency 911, firefighting and other public safety and emergency response operations.

Other long-term contracts with California agencies enable delivery of communications service to K-12 schools, colleges, universities, libraries, hospitals and other public offices across the state, often at special rates from state and federal subsidy programs to ensure these anchor institutions are connected.

Service provided pursuant to these contracts is entirely separate from provisions of residential service, including low-cost broadband service to eligible low-income households.

SB 1179 risks interruptions to critical state internet services by potentially making an existing contractor ineligible from the moment the bill takes effect, the CalChamber warned.

Even if an existing contractor's current offering qualifies, the California Department of Technology can redefine the speed requirement at any time, disqualifying that contractor. The state cannot issue a fair Request for Qualification prior to procurement when providers cannot predict what the key qualifier will be. This will shrink the competitive pool of vendors, which will raise costs.

Staff Contact: Ben Golombek