

ALERT

Job Killer Raising UI Taxes Misses Key Deadline, Dies



A California Chamber of Commerce **job killer** bill that would have hiked unemployment insurance (UI) taxes failed to meet a key deadline last week and is

dead for the year.

The bill, **SB 1434 (Durazo; D-Los Angeles)**, had until Friday, April 26, to make it out of its first policy committee and failed to do so.

SB 1434 increased UI taxes to fund UI benefit hikes of up to 55%, as well as providing for subsequent increases based on inflation. It also created an entirely new UI program to provide benefits to workers who do not qualify for traditional UI, to be funded by a new tax on California employers.

The CalChamber conservatively estimated the bill's proposed changes would have resulted in more than a 200% increase in UI-related taxes for all California employers.

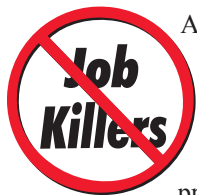
Massive Tax Increase

SB 1434 was disguised as reform to California's UI program, but the changes it proposed would have increased the drain on the UI Fund, which has a current deficit of \$20.7 billion.

SB 1434 would have increased California's maximum weekly benefit by 55.6% for claims filed in 2025, and then provided for continual upward adjustments beginning in 2026 based on inflation. The bill also altered the calculation of benefits award to increase the number

See Job Killer Raising: Page 7

Tax on Digital Advertisements Stalls



A **job killer** bill that sought to tax digital advertising revenue has stalled and is likely dead for the year, as tax-related proposals are not subject

to the normal legislative deadlines.

The bill, **AB 2829 (Papan; D-San Mateo)**, implements a new tax on digital advertisements of 5% of the revenue generated by the ads. In addition to increasing taxes on businesses, it is likely unconstitutional.

Likely Unconstitutional

The CalChamber opposed AB 2829 because it would enact an unnecessary, unimplementable, and likely unconsti-

tutional digital ad tax on California's employers. The bill punishes businesses of all sizes and communicates that employers will be fiscally targeted by the state merely for operating here. Moreover, AB 2829 will subject the state to an onslaught of litigation and drive employers elsewhere.

AB 2829 aims to tax businesses that have annual global revenue of at least \$100 million at a rate of 5% of the revenue derived from digital ad services. The bill is nearly identical to Maryland's digital ad tax that was signed into law in 2020.

Maryland's legislation has been the subject of litigation since its inception and provides a glimpse into California's future should AB 2829 be signed into law

See Tax on Digital: Page 4

Background Check Job Killer Dead for Year



A **job killer** bill that effectively prohibited consideration of conviction history in employment has been stopped this year after missing a key deadline

last week.

SB 1345 (Smallwood-Cuevas; D-Los Angeles) would have effectively prohibited most employers from considering conviction history of an applicant, existing employee, or contractor in employment or contracting decisions.

Unintended Consequences

While the CalChamber agreed with the importance of ensuring that applicants with a conviction history are provided with fair access to the job market, the potential unintended consequences of SB 1345 were significant.

Outside of showing a "business necessity," which would be a difficult bar to meet as discussed below, the only other exception is those employers that are required to conduct a background check or consider conviction history by law. That tends to apply only to heavily regulated industries (such as financial institutions or health care) or jobs the government has perceived to be sensitive in nature (schools or security guards).

Flawed Bill

In a letter to legislators, the CalChamber pointed out that SB 1345's flaw is that many of the same rationales that served as the impetus for laws directing

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Labor Law Corner

Medical Certification for Family Leave: Stay in Touch with Employee



Dana Leisinger
Employment Law
Expert

Our employee went on family leave on March 1 (for which she was qualified). Our outside leave administration company disallowed the claim due to the fact she didn't get a medical certification in 15 days. She is still out, but her status is now unclear because we didn't find out until much later about the denial of leave. What should we do?

While it is true that an employee must provide the medical certification

within 15 calendar days of the employer's request to provide it, the Code of Federal Regulations (29 CFR 825.305) states specifically that the certification is required "unless it is not practicable to do so despite the employee's diligent, good faith efforts or the employer provides more than 15 calendar days to return the requested certification."

It is not uncommon for employees to have difficulties getting the certification from their doctor. A number of factors come into play: The employee's unsettled health status, the doctor's busy schedule, or the cost the doctor might charge for completing the medical certification.

Open a Dialogue

It's best, for these reasons and others, not to have a knee-jerk reaction to denying the leave for not getting the certification within the 15 days. The company (or outside administrator) should open a dialogue with the employee to ascertain why there is a delay. There could be a valid reason for the delay.

In this situation, it was an outside company handling the leave request.

Large companies often outsource handling leaves of absence; however, this is what can happen with a disconnect.

Employer Responsibility

Further, even though employers may choose to outsource employment-related tasks such as leave administration, the employer is always the primary entity responsible for ensuring compliance with employment laws.

A discussion with the employee might reveal that they were trying to get the certification, and good faith efforts were not producing results.

To ensure compliance, employers should try to stay in touch with employees who need/are on a leave, and make any decisions regarding the leave after finding out all the related information.

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

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.

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

International Trade

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.

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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

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The Workplace

Questions on Displays of Affection, Pronoun Use, Free Speech and More



In **Episode 194** of The Workplace podcast, CalChamber Labor and Employment General Counsel Bianca Saad, CalChamber

Associate General Counsel Matthew Roberts and CalChamber Employment Law Subject Matter Expert Vanessa Greene discuss some of the issues HR training attendees have been asking about recently.

Roberts and Greene have been traveling throughout the state, conducting CalChamber harassment prevention trainings. Below are some of the issues employers have been asking about:

Displays of Affection

Marital status is a protected class, but what if married employees work in the same workplace and engage in consensual public displays of affection at the workplace, Saad asks Roberts?

This is a question that has been asked in back-to-back sessions recently, Roberts says.

Ultimately what it comes down to is the comfort in the workplace and being respectful of other employees, Saad points out.

Even though marital status is a protected class, if the public displays of affection are making others uncomfortable, it creates a hostile work environment, Roberts explains. When employees or third parties at the workplace are experiencing discomfort, it is going to interfere with their employment at work.

“That conduct is not going to be OK, even though it’s centered around, in this case, the marital status protected class,” he says.

Preferred Pronouns

Another question that has been raised is whether someone is required to use

another person’s preferred pronouns if it conflicts with their religious beliefs.

Greene says she is asked this question frequently and the issue illustrates the complexities of the modern workplace, especially where employers are trying to navigate both the legal rights and the personal beliefs of employees.

Under both federal and California law, employees are entitled to be recognized by their preferred pronouns, Greene explains. The U.S. Equal Employment Opportunity Commission (EEOC) takes the position that intentionally and repeatedly using the wrong pronouns to refer to an LGBTQ+ employee may give rise to an actionable Title VII claim based on gender identity discrimination (Title VII of the Civil Rights Act of 1964). But simultaneously, sincerely held religious beliefs are also protected under federal law and under California’s Fair Employment and Housing Act.

Employers generally are going to have to grant religious accommodation requests in the workplace unless doing so would create an undue hardship on the employer.

“We have this situation where balancing both of these rights can get a bit tricky. When one employee objects to using another’s preferred pronouns due to religious beliefs, accommodating that employee’s request could arguably create a hostile work environment for another employee. It could also be seen as discriminatory toward the other employee based on their gender identity, which we know is a protected class under both federal and state law,” Greene says.

The law also states that employers aren’t required to grant an accommodation if doing so results in discrimination or violates other employees’ civil rights. So the answer is tricky, because there is no one-size-fits-all answer in these situations, she says.

Employers should engage in the interactive process and have a discussion with the employee making the request to really

see if there’s a way they can balance both of the employees’ rights without violating the law, she says.

“It’s possible that after going through this interactive process, an employer might end up denying the request. But employers really need to understand that the law requires that they go through this process first before just denying a request. So really, the takeaway here is that each situation needs to be considered on an individual basis. And I think ultimately, the goal should really be about trying to foster an inclusive workplace where everyone feels respected and valued,” Greene says.

Free Speech

Another question employers often ask is whether an employee can get disciplined under harassment prevention rules for speech they engage in away from the workplace and after hours?

Roberts says that it’s not where you are with regards to your conduct, but it’s who you’re with — who is the audience, who is receiving or observing or witnessing this conduct that’s going on?

There is free speech in America, and employees have the right to go to political demonstrations, political rallies, and protests. But the workplace is a different place, he says.

If an employee engages in speech outside of the workplace that is negatively directed toward someone and is motivated by a protected class (for example, race, sex, religious belief), and this conduct is observed/heard by a co-worker, then that is conduct that will harm and have a negative impact on their interactions at the workplace.

Roberts says that these conduct and harassment issues should be judged on whether they unreasonably interfere with an employee’s work. Is it creating a hostile or intimidating work environment? Ultimately, employers are obligated to take action to prevent harassment in the workplace.

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CalChamber Challenges Proposed Antitrust Overhaul



The California Chamber of Commerce made the case this week that

California's antitrust and competition laws do not need to be radically changed to target single firms that improve their market position through legal and naturally competitive means.

The [Legislature in 2022](#) directed the California Law Revision Commission to examine whether California should make major changes to its antitrust and competition laws, affecting every industry in the state, from large technology companies to media, health care, grocery and small businesses, among many others.

The Commission scheduled three hearings on seven subject matter topics, with the goal of providing recommendations to the Legislature by the end of the year. The Commission convened working groups to prepare briefings on the subject matter topics. The first topic, Single Firm Conduct, was considered by the Commission on May 2.

CalChamber Testimony

Eric Enson, an antitrust attorney with Crowell & Moring LLP representing CalChamber, [in testimony submitted to the Commission](#), stated that the "legislative proposal" [prepared by the working group](#) rejects over a century of federal and

state precedent designed to identify truly anticompetitive conduct and fails to distinguish between what is and what is not anticompetitive, thereby potentially outlawing the type of aggressive competition that the antitrust laws were designed to promote and that ultimately benefit consumers.

Enson also noted that the proposal was fundamentally flawed because it is not based on a demonstrated need for reform, but is based merely on anecdotal and unsupported beliefs that competition in California could be more robust, and it does not provide any economic analysis of the likely impact of the reforms.

The proposal's imprecision and lax standards, according to Enson, will chill competition and will lead to increased litigation that will result in inconsistent rulings among courts, together with rulings restricting pro-competitive conduct, making doing business in California more expensive, riskier, and less desirable, all of which is bad for California consumers and workers.

Enson also argued that California antitrust officials, and private citizens, can and have used federal antitrust laws to remedy unlawful behavior by single firms.

Second Topic

The second working group topic considered by the Commission on May 2 was Concentration in California. The [working group paper on this topic](#) is a recitation of "case studies" of targeted industries, plus labor practices, that sheds

no light on California practice, and indeed demonstrates how current federal and state laws and enforcement sufficiently ensure robust and fair competition.

Law Revision Commission

The Law Revision Commission is organized to study selected laws to discover defects and anachronisms and recommends legislation to make needed reforms. This study is among the most far-reaching projects the Commission has undertaken, as measured by its potential effects on the California economy.

The seven Commission-appointed working groups [have developed papers](#) on the following subjects: Single Firm Conduct, Concentration in California, Mergers and Acquisitions, Technology Platforms, Concerted Action, Consumer Welfare Standard, and Enforcement and Exemptions.

Coalition

The CalChamber is organizing a coalition of industry associations and individual businesses to address this looming issue, which could have far-reaching implications for the competitive marketplace in the state.

The coalition will enlist a full suite of services to improve the California business community's capacity to engage on this issue before the Commission, and ultimately before the Legislature.

Contact: Loren Kaye

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— namely unending and expensive litigation, the CalChamber pointed out in a recent letter to legislators.

Other Concerns

AB 2829 also appears to violate the Internet Tax Freedom Act (ITFA), the First Amendment, and the Commerce Clause. Specifically, the ITFA was enacted in 2016 and establishes policy regarding federal and state taxation of the internet, based upon its unique characteristics as a mode of interstate and global

commerce uniquely susceptible to multiple and discriminatory taxation.

The ITFA preempts multiple or discriminatory taxes on electronic commerce. The Act states that a discriminatory tax is any tax on electronic commerce that is not generally imposed and legally collectible by such state or political subdivision on transactions involving similar property, goods, services, or information accomplished through other means.

An ITFA and Commerce Clause violation appear to be the most pressing issues

in this case. AB 2829 would impose a tax only on digital ads, which is obviously the assessment of a targeted and discriminatory tax. Furthermore, the bill expressly exempts usual forms of advertising while aiming its sights on entities with \$100 million or more in annual revenue. In regard to the First Amendment, the bill exempts broadcast and news media, which is content-based discrimination.

AB 2829 was held on the Assembly Revenue and Taxation Committee Suspense File this week.

Staff Contact: Preston Young

World Trade Month Underscores Link Between Economic Growth, Global Trade



Susanne T. Stirling

As World Trade Month begins, the California Chamber of Commerce is emphasizing the significance of international trade in maintaining economic growth.

World Trade Month activities each May provide many opportunities to acknowledge the importance of global trade to the economies of California and the United States. The U.S. Department of Commerce points out that World Trade Month celebrates how international trade unlocks new business opportunities, creates jobs, and strengthens the U.S. and global economy.

The CalChamber encourages interest in and understanding of international trade as a vital part of our economy, together with promoting a national agenda on free trade. Further, it is important to promote education of California's citizens, legislators, and businesses about the benefit of trade to the state's economy.

Thanks to continued economic growth and strong performances in a variety of industry sectors, California has again ranked as the fifth largest economy in the world. On a per capita basis, California is the second largest economy in the world. (See U.S. Department of Commerce [Trade Stats Express](#).)

Governor Gavin Newsom said: "California continues to punch above its weight, overperforming all but a handful of the largest countries in the world. And with our unparalleled combination of innovation, higher education, a talented

workforce, diverse industries, and unparalleled natural resources, we will continue to do so well into the future."

In 2023, California GDP was nearly \$3.9 trillion — a growth of just over 6% from 2022. The top four national economies are the United States (\$27.4 trillion), China (\$17.7 trillion), Germany (\$4.4 trillion) and Japan (\$4.2 trillion).

Also, India's economy continues accelerated growth. India has been the fastest-growing large economy and remained the sixth largest economy since overtaking the United Kingdom in 2021 and is close behind California.

Commentary

By Susanne T. Stirling

California Trade Statistics

In 2023, California exported \$178.717 billion to 227 foreign economies. California's top five export markets remained the same in 2023; in order: Mexico, Canada, China, Japan and South Korea.

As in 2022, there was some shuffling with the next five export partners to round out the top 10. Taiwan remained California's sixth largest export partner, with the Netherlands in seventh place, followed by Germany. The United Kingdom returned to ninth place after dropping to 11th in 2022, and Hong Kong remained in 10th place.

In 2023, California imported \$449.485 billion worth of goods from the world. California's top sources of imports are China, Mexico, Taiwan, Vietnam and Japan.

Global Trade Forecasts

The International Monetary Fund's (IMF) [World Economic Outlook](#) was released in April, providing 2023 economic data for countries and regions. According to the IMF, global recovery is steady but slow and differs by region.

The IMF's baseline forecast is for the world economy to continue growing at 3.2% during 2024 and 2025, at the same pace as in 2023.

At the same time, the [World Trade](#)

[Organization \(WTO\)](#) forecasts a rebound in global trade but warns of downside risks.

Global goods trade is expected to pick up gradually this year following a contraction in 2023 that was driven by the lingering effects of high energy prices and inflation, WTO economists said in a forecast released on April 10.

The volume of world merchandise trade should increase by 2.6% in 2024 and 3.3% in 2025 after falling 1.2% in 2023, the WTO said. Regional conflicts, geopolitical tensions and economic policy uncertainty pose substantial downside risks to the forecast, according to the WTO.

Election Year / Trade Policies

This year, more voters around the world than ever before will head to the polls in regional, legislative and presidential elections that could change political institutions, the economy, and international relations. More than 60 countries representing half the world population of 4 billion people will hold elections that may prove consequential for years to come.

The role of international trade and investment as major parts of any economic engine that broadly benefits businesses, communities, consumers and government is a subject of concern.

As the United States heads toward a presidential election, there are a number of international trade topics on the table: the U.S. dollar, tariffs and trade agreements.

U.S. Dollar

The strong U.S. dollar gives American consumers more buying power on the international market to buy goods from countries that have slower economic growth and recovery. At the same time, however, the strength of the dollar makes U.S. exports more expensive, thus raising the trade deficit.

The CalChamber supports achieving and maintaining a stable and competitive relationship of the U.S. dollar and the currencies of our major trading partners.

Tariffs

While the CalChamber wholeheart-

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edly supports efforts to ensure our trading partners adhere to fair and transparent trade practices and are held accountable when they violate international rules, raising tariffs results in higher prices to the consumer for the specific product protected and in limited product choices for consumers.

Further, increased tariffs cause a net loss of jobs in related industries, retaliation by U.S. and California trading partners, and violate the spirit of our trade agreements.

Trade Agreements

The CalChamber believes strengthening economic ties and enhancing regulatory cooperation through agreements with our top trading partners that encompass both goods and services, including financial services, is essential to eliminating unnecessary regulatory divergences that may act as a drag on economic growth and job creation.

We further support trade agreements which ensure that the United States may continue to gain access to world markets,

resulting in an improved economy and additional employment of Americans.

We also support actions designed to eliminate barriers that impede U.S. and California commerce domestically and abroad by aggressively negotiating fair and equitable market access for California agriculture, high tech and manufactured products, as well as services.

CalChamber Position

The CalChamber supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

California's economy is diverse, and the state's prosperity is tied to exports and imports of both goods and services by California-based companies, to exports and imports through California's transportation gateways, and to movement of human and capital resources.

Susanne T. Stirling is vice president of international affairs for the California Chamber of Commerce.



Questions on Displays of Affection, Pronoun Use, Free Speech and More

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Confidentiality Requests

Saad asks Greene what actions a manager can legally take if an employee reports harassment, but demands confidentiality and says they don't want a formal complaint?

There are numerous reasons why an employee would approach their supervisor with a discrimination or harassment issue and express the desire to not file a

formal complaint, Greene says.

The employee may fear retaliation or may be conflict averse. Regardless of the reason for the employee's reluctance, supervisors have a legal duty to report and address the issues they become aware of, she stresses. California's Fair Employment and Housing Act states that employers are required to investigate allegations of harassment promptly and thoroughly, even if the reported incident happened after work hours.

This also includes incidents that could be relayed by third parties to the supervisor or even things that the supervisor observes directly without anybody coming to them and making an actual complaint.

"Ultimately, supervisors really need to understand that there's no such thing as an 'off the record' complaint in the eyes of the law, and every harassment or discrimination issue must be taken seriously and reported up the chain," she says.

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 Develop-

ment (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, Philip-

ines. (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

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of workers who qualify for maximum benefits. It also increased the benefits for workers who hold two jobs but lose one, by increasing California's "earnings disregard" by 100%.

Cumulatively, these changes would have resulted in massive increases in benefits and would have necessitated massive increases in taxes on California's employers. The bill implicitly acknowledged that it would require considerable tax increases on California employers to fund these massive benefit increases.

'Excluded Workers Fund'

In addition to increasing costs to California's UI Fund, SB 1434 would have created a new "Excluded Workers Fund" based on an additional 0.5% tax on the taxable wages of California employers to fund this new program.

To give a sense of scale of the tax increase SB 1434's "Excluded Workers Fund" would have necessitated, below is a rough estimate:

Based upon U.S. Department of Labor statistics, California has roughly 18.3 million employees. Assuming employers pay UI taxes on a taxable wage base

of \$7,000 (present law, not SB 1434's proposed change), a 0.5% tax increase would result in an aggregate tax increase of \$640 million.

However, one must then likely double or triple this estimate because SB 1434 is all but certain to include a massive increase in California's taxable wage base. For that reason, the CalChamber conservatively estimates that the "Excluded Workers Fund" is likely to cost California's employers more than \$1.2 billion aggregate on an annual basis, spread across all employers — regardless of whether they employ such "excluded" workers.

Staff Contact: Robert Moutrie

Background Check Job Killer Dead for Year

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certain industries to conduct background checks, such as interacting with children or access to consumer financial information, apply to businesses not covered by those laws.

For example, youth sports/organizations operated through a park and recreation league or school district qualify for an exception, but private youth sports organizations do not.

Other reasons the CalChamber opposed SB 1345 include:

- The burden established under SB

1345 was so high that it effectively banned background checks unless the employer was required by law to conduct them;

- Requires employers already subject to background check laws to new requirements that may conflict with existing state/federal laws;
- Restrictions on the use of conviction history was expanded to independent contractors; and
- Certain convictions are relevant to every workplace. It is every employer's goal to create a safe working environment

for their workers and customers. Prohibiting an employer from becoming aware of or reacting to convictions for violent crimes, sex offenses, theft, or other serious crimes can undermine that goal.

SB 1345 failed to pass the Senate Judiciary and Senate Labor, Public Employment and Retirement committees before the April 26 deadline for legislation to move from policy to fiscal committees.

Staff Contact: Ashley Hoffman



Meet SB 553's Requirements

Our 2-hour webinar gives you the tools you need to complete your Workplace Violence Prevention Plan before the July 1, 2024 deadline.

ONE DAY ONLY.

[Reserve Your Seat](#)

