

ALERT

CalChamber Stops Harmful Bills in Fiscal Committees

End-of-Session Update CalChamber Keeps Up Pressure to Kill Bad Bills



OPPOSE

Strong **opposition** from the California Chamber of Commerce and allied groups stopped a number of harmful proposals in Senate and Assembly fiscal committees on August 15, including many bills that were top priorities for CalChamber members.

“Yesterday was a very good day for California’s business community,” said Ben Golombek, CalChamber executive vice president and chief of staff for policy, the day after the fiscal committees acted. “CalChamber’s efforts led to several bills being abandoned or being

amended significantly enough to resolve our concerns during the suspense file process. Some of yesterday’s big wins include stopping or amending down AI bills, labor-backed legislation, broadband, health care and burdensome regulatory proposals, among many others. The CalChamber team did a great job getting our message through to policy makers and making a real difference on behalf of our members.”

CalChamber Wins on Priority Bills

- **AB 1757 (Kalra; D-San Jose):** Defeated. Website Accessibility. Creates further litigation abuses in California related to online website accessibility, while providing illusory protection against such abuse.

See CalChamber Stops: Page 5



OPPOSE

CalChamber policy advocates are continuing end-of-session pressure to minimize potential damage from harmful legislative measures as they head to the Assembly and Senate floors for final votes.

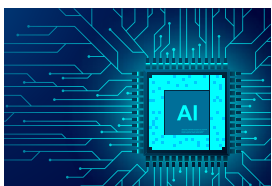
In the final week of the legislative session, these priority bills are front and center of CalChamber’s advocacy efforts:

- **SB 399 (Wahab; D-Hayward)** Even with amendments adopted by the Assembly Appropriations Committee, SB 399 remains deeply flawed. The bill chills employer speech regarding religious and political matters, including unionization. It is likely unconstitutional under the First Amendment and preempted by the National Labor Relations Act. Job Killer 2023

- **SB 1047 (Wiener; D-San Francisco)** Requires frontier AI developers to make a “positive safety determination” before initiating training of a covered model, among other things, subject to harsh penalties that include criminal penalties. Creates significant uncertainty for businesses due to vague, overbroad, impractical, and at times infeasible, standards, requirements, and definitions. Focuses almost exclusively on creating developer liability for failing to foresee and block any and all

See CalChamber Keeps: Page 3

AI Models Bill Will Hurt Economy, State Industry Leadership, Study Concludes



The California economy and state leadership in the global artificial intelligence (AI)

industry will be hurt by a pending bill that aims to establish a model for training AI, according to a recent analysis.

If the bill, **SB 1047 (Wiener; D-San Francisco)**, passes, substantial portions of the California industries related to AI will cease operations or move out of the state, the analysis by [Encina Advisors, LLC](#) concludes.

SB 1047’s provisions would create

substantial uncertainty around liability for both AI-related startups and established companies operating in California, according to the analysis.

Opponents of SB 1047 include a coalition of business and industry groups led by the California Chamber of Commerce; leading California Democratic Congressional representatives, including the former Speaker of the House and a member on the U.S. House committee with jurisdiction over AI; a renowned computer scientist; and academic researchers from seven University of California campuses, plus the University of Southern California and Stanford University.

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Inside

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*Labor Law Corner***Exempt Employee Salary Deductions: Proceed with Caution**

Erika M. Barbara
Senior Employment
Law Counsel

An exempt employee took off Monday and Tuesday, worked a partial day on Wednesday, and worked full days on Thursday and Friday. He has no accrued vacation time available to use. Can I deduct from his salary for the time he did not work?

To answer this question, it is important to first understand the rules regarding deductions from an exempt employee's salary.

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General Rule

As a general rule, if an exempt employee works any time during a workweek, they must be paid their full salary. That is because employees who are classified as exempt under the executive, administrative and professional exemptions in California must be paid on a salary basis, meaning they are paid the same weekly salary regardless of the number of hours worked.

Employers cannot deduct from an exempt employee's salary for: variations in hours worked or quality of work; disciplinary reasons; partial-week business closures or shutdowns; or partial-week absences due to jury, witness, or military duty.

Full-Day Deductions

Full-day deductions from salary are allowed only in limited circumstances:

- During an employee's first and last weeks of employment (that is, the employee can be paid for only the actual days worked in each week);
- For full-day absences for personal reasons when an employee does not have any available vacation time or paid time off (PTO) to use; and
- For full-day absences for illness if the employer has a bona fide sick leave plan and an employee does not have time available under the plan.

In the situation described above, if the employee was off for full days on Monday and Tuesday and performed no work, the

employer can deduct two full days of pay from his weekly salary because he does not have any vacation time available.

These full-day salary deductions are permissible only because the employee performed no work. If he did any work during the day — such as joining a conference call or responding to emails — the employer cannot deduct from his salary and he must be paid his full salary for the day.

Intermittent Leave**No Partial-Day Salary Deductions Unless Intermittent CFRA/FMLA Leave**

As explained above, if an employee performs any work in the workday, the employee must be paid their full salary for the day; that is, the employer cannot make a partial-day salary deduction.

Here, the employee worked a partial day on Wednesday so he must be paid his full salary for that day; the employer cannot deduct from his salary because he did not work a full day on Wednesday.

The only exception to that rule, which is not present in this situation, is when an employee is using intermittent leave under the federal Family and Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA).

When an employee is using intermittent leave under FMLA/CFRA, an employer may pay the employee for only the hours worked during a day that they use that type of leave.

See Exempt Employee: Page 4

CalChamber-Sponsored Seminars/Trade Shows

More information at www.calchamber.com/events.

Labor and Employment

HR Boot Camp. CalChamber. September 12–13, Online. (800) 331-8877.

Sick Leave, Vacation, PTO: What California Employers Need to Know. CalChamber. September 16, Online. (800) 331-8877.

Supervisor Essentials: Workplace Compliance. CalChamber. September 26, Online. (800) 331-8877.

Supervisor Essentials: Wage and Hour. CalChamber. September 27, Online. (800) 331-8877.

International Trade

Certified Business Professional: Up Your Global Business Game! National

Association of District Export Councils. August 27, Online.

2024 Green Expo: California Pavilion.

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CalChamber Calendar

Women's Leadership Council:

September 12, Anaheim

ChamberPAC Advisory Committee:

September 12, Anaheim

Board of Directors:

September 12–13, Anaheim

International Trade Breakfast:

September 13, Anaheim

The Workplace

A Look at California Workplace Violence Prevention Challenges, Lessons



In **Episode 203** of The Workplace podcast, CalChamber General Counsel Bianca Saad discusses with CalChamber Senior Employment

Law Counsel Erika Barbara and CalChamber Vice President of Human Resources Hilda Watson the common questions, practical challenges and lessons that employers have been experiencing as they implement their workplace violence prevention programs. *The article below provides a brief summary of the topics discussed in the podcast episode. Readers are encouraged to listen to the podcast for a more detailed discussion.*

California's new workplace violence

prevention requirements stem from 2023's SB 553 and took effect on July 1, 2024. They require covered employers to comply with many components, including but not limited to creating, maintaining and implementing a Workplace Violence Prevention Plan; training on the plan; and maintaining various records.

"And it isn't just a one-time exercise for employers," Saad reminds listeners. "The workplace violence prevention plan must be updated, and employees must be trained on an annual basis, and this doesn't include any additional training that may be required due to changes in the plan."

Common Questions

As a regular expert fielding calls on CalChamber's Labor Law Helpline, Barbara notes that a common question all the employment law experts receive is, "Does this law apply to my business?"

The short answer is that this law applies to all employers in the state of California — with only limited exceptions. And two of the exemptions — certain remote employees and places of employment with fewer than 10 employees that are not open to the public — also garner many questions.

Barbara clarifies these two exemptions for listeners, and notes that if employers are still unclear, it's best to consult legal counsel.

Implementation Challenges

Watson has become very familiar with the requirements while implementing the plan and other components at CalChamber, and notes some overall challenges and lessons learned as she worked through the process.

First, Watson says that the model plan *See A Look: Page 5*

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conceivable uses of a model that might do harm — even if a third party abuses the model. As a consequence of these flaws, the proposal deters open-source development, undermines technological innovation and our economy. It also imposes unreasonable requirements on operators of computing clusters, including a requirement to predict if a prospective customer "intends to utilize the computing cluster to deploy a covered model" and to implement a "kill switch" to enact a full shutdown in the event of an emergency. Establishes a totally new regulatory body, the "Frontier Model Division," within the Department of Technology, with an ambiguous and ambitious preview.

- **SB 1446 (Smallwood-Cuevas; D-Los Angeles)** Use of Technology in Grocery and Retail Stores. Overly prescriptive mandate narrowing the use of self-checkout stations that will frustrate customers and increase costs to retailers and requires stores to notify all workers and the public any time they choose to utilize new technology. Has been assigned to the Assembly Rules Committee to allow the bill's sponsors to work on changes.

- **AB 3211 (Wicks; D-Oakland)** AI

Watermarks. Places very prescriptive and technologically infeasible requirements on AI developers, large online platforms and camera/recording device manufacturers to incorporate a brand-new technology that is still developing. What this technology is currently capable of changes basically every month. For example, just a couple months ago, there wasn't a program that can watermark text, making the bill's requirements to do so impossible to comply with. Currently, one company is seemingly closer to having that technology, but the technology is not yet fully reliable, raising serious competition concerns around entrenching market leaders. When violations invariably occur, companies face significant penalties under this bill.

- **AB 2481 (Lowenthal; D-Long Beach)** Youth Social Media Protection Act. Requires "large social media platforms" to create a process to verify an expansive list of individuals as "verified reporters," including school principals and counselors, among others, which will result in over 146,000 verified reporters," each of which can make a report of a "social media related threat" or a violation of the platform's terms of service that in their opinion poses a

"severe risk" to the health and safety of a minor. A "social media related threat" is content that promotes, incites, facilitates, or perpetuates any one of 15 problems, many of which are entirely subjective (e.g. suicide, cyberbullying, harassment, academic dishonesty). Depending on the size of a platform, a platform must then respond to any report by a non-verified reporter within 10–21 days or, if the report is submitted by a verified reporter, within 24–72 hours. Violations are subject to a private right of action by any person making a report, or unable to make a report, in violation of the bill for relief, including statutory damages of up to \$10,000 per violation.

- **AB 1008 (Bauer-Kahan; D-Orinda)** Public Records Access. Impedes free flow of information in violation of the First Amendment by illogically basing access to public information on the method and technology used to gain access to the information.

- **AB 3129 (Wood; D-Santa Rosa)** Stifles Free Market Transactions for Health Entities. Requires private investors to obtain the consent of the California Attorney General before acquiring or effecting a change of control with respect to certain health care entities.

Supreme Court: Public Entities Not Liable for PAGA Penalties



The Private Attorneys General Act (PAGA) continues to make news as a decision

from the California Supreme Court — amongst other holdings — determined that the Legislature’s overall PAGA design exempted public entities from its enforcement (*Stone v. Alameda Health System*, S279137 (Aug. 15, 2024)).

This comes on the heels of a flurry of previous PAGA-related court activity and a major legislative reform package.

The PAGA’s primary design allows aggrieved employees to recover civil penalties from employers for Labor Code violations. However, a common California Labor Code principle is that if a Labor Code section does not expressly apply to public entities, then public entities are exempt from its rule. This principle has never been applied to a PAGA action until now.

Alameda County, like all California counties, has a duty under the law to provide medical services for its indigent populations. After a period of managing this duty itself, the Alameda County Board of Supervisors asked the California Legislature for permission to create a separate public entity to perform this duty. The Legislature agreed, and the Alameda Health System (AHS) was created as a “separate public agency” for this purpose.

Alameda Health System Case

Tamelin Stone and Amanda Kunwar worked at Highland Hospital, an AHS-run facility. They brought suit against AHS for several Labor Code violations and a representative PAGA

action on behalf of themselves and other aggrieved AHS employees.

The trial court dismissed the individual Labor Code claims because the AHS was a public entity and not expressly subject to those claims. The trial court also dismissed the PAGA action because the AHS, as a public entity, is not defined as a “person” subject to PAGA penalties. On appeal, the Court of Appeal reversed several trial court rulings including that certain PAGA actions will apply to public entities.

On appeal to the California Supreme Court, a primary issue was whether public entities can be subject to PAGA penalties. Complicating the issue are the two types of penalties described in the PAGA — default and nondefault.

Default penalties are the statutory penalties found within PAGA itself and apply when an underlying Labor Code violation does not have its own penalty (e.g., Labor Code section 2802 expense reimbursement claims).

Conversely, nondefault penalties are those penalties where the underlying Labor Code violation does have its own penalty provision (e.g., Labor Code section 226 pertaining to wage statements).

On review of the PAGA statute, it is clear that default penalties do not apply to public entities because public entities are not part of the definition of “person” who can be liable for default PAGA penalties. However, the same statute is silent on which employers are liable for the nondefault penalties contained in the underlying Labor Code sections.

Supreme Court Review

Reviewing the legislative drafting history and language choice throughout the statute, the California Supreme Court determined that it is much more

likely that the Legislature intended to exempt public entities from either set of penalties under the PAGA and to attribute its silence in this section to liability for nondefault penalties would be inconsistent with the rest of the statute’s language.

Of course, this is a huge win for public entities as they don’t have to worry about the PAGA at all. Unfortunately, private entities don’t have this luxury and do need to ensure their procedures comply with the law to avoid PAGA claims.

The good news is that private entities got a huge win earlier this year with the aforementioned PAGA reform.

‘Reasonable Steps’

Under PAGA reform, private employers have many new benefits to limit PAGA liability, including the ability to drastically limit their exposure to PAGA penalties by taking “reasonable steps” to avoid or correct Labor Code violations. The beauty of this reform is that even after receiving a notice of violations, employers may still take specific “reasonable steps” related to the alleged violations to limit penalties. “Reasonable steps” may include:

- Payroll audits;
- Implementation and dissemination of lawful policies related to Labor Code issues, such as meal and rest breaks, overtime and timely payment of wages; and
- Supervisor training and discipline for failure to follow policies or procedures.

Take advantage of CalChamber’s PAGA Wage and Hour Compliance Toolkit to help execute reasonable steps and take full advantage of all the new employer-friendly changes to PAGA.

Staff Contact: Matthew J. Roberts

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Use of Vacation or PTO

To answer the question above, the employer must pay the exempt employee for three full days — Wednesday, Thursday and Friday — but can deduct from his salary for the full-day absences on Monday and Tuesday.

The answer to this question would

have been different if the employee had vacation time or PTO available to use. If the employee had sufficient vacation to cover all the time he was out, the employer would not make any salary deductions.

Rather, the employee would have been paid his full salary for the week and the employer could have deducted 20 hours from his vacation bank to cover the full-day absences on Monday and Tues-

day (16 hours) and the half-day absence on Wednesday (4 hours).

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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• **AB 2239 (Bonta; D-Alameda):** Defeated. Slows Broadband Deployment. Slows down the deployment of broadband in California and will likely lead to litigation.

• **AB 2374 (Haney; D-San Francisco):** Defeated. Joint Liability for Businesses of All Sizes. Originally imposed new statutory joint liability on business of any size that contracts for janitorial services if a contractor violates the Displaced Janitor Opportunity Act and placed new mandates on those businesses that should be assigned to the contractor. Job killer status removed due to May 16, 2024 amendments removing joint liability portion of the bill and making other changes. CalChamber remains opposed unless amended due to the requirement that an awarding authority must provide certain notifications to a union representing another entity's employees. Oppose Unless Amended.

• **AB 2877 (Bauer-Kahan; D-Orinda):** Defeated. Restricting Information Available to Train AI. Amends the California Consumer Privacy Act (CCPA) to prohibit a developer, as defined, from using the personal information (PI) of a consumer less than 16 years of age, as specified, to train or "fine-tune" an AI system or service unless affirmative authorization is provided pursuant to the CCPA's provisions providing opt-out/opt-in rights. Because another pending bill, AB 1949, would also amend the existing opt-out/opt-in rights for minors under that same provision, potentially could apply to any consumer under the age of 18. Even if authorization is received, businesses would be prohibited from using the PI of minors unless they both deidentify and aggregate

the data. By limiting inputs, this bill regulates the technology itself, hamstringing developers from appropriately training the technology. Realistically, forces companies to engage in either age verification or not use any PI to train any AI. Even if they are able to age verify consumers, unintended consequences are likely significant, because access to data specific to children and teens is essential to develop tools to provide them unique support for risks and challenges specific to their age groups.

• **AB 1791 (Weber; D-San Diego):** Defeated. Digital Content Provenance. Mandates removal of certain information from user-generated content; however, technology doesn't currently exist to do so. Conflicts with other pending legislation.

• **AB 2557 (Ortega; D-San Leandro):** Defeated. Local Entity Contracts. Significantly limits the ability of public entities to contract with local small businesses or non-profits.

Other Bills Stopped in Fiscal Committees

Among other CalChamber-opposed bills held in the Senate Appropriations Committee were:

• **AB 560 (Bennett; D-Ventura):** Groundwater Adjudication Proceedings. Imposes new requirements for courts to consult with State Water Board prior to entering a final judgment in a groundwater adjudication, raising questions about role of executive in the judiciary.

• **AB 868 (Wilson; D-Suisun City):** Burdens on Political Speech: Requires state's Fair Political Practices Commission (FPPC) to set up massive new database and bureaucracy to manage and compile most digital advertisements, which can

already be tracked via Secretary of State.

• **AB 1588 (Wilson; D-Suisun City):** Affordable Internet and Net Equality Act. Inappropriately complicates state procurement contracts rather than focus on the goal of securing more eligible Californians enroll in the Affordable Connectivity Program (ACP) to get broadband services.

• **AB 2421 (Low; D-Silicon Valley):** Employee-Union Agent Evidentiary Privilege. Effectively creates a new, broad evidentiary privilege in the public sector that is one-sided and will preclude relevant evidence during litigation or workplace investigations.

Among the CalChamber-opposed bills held in the Assembly Appropriations Committee were:

• **SB 308 (Becker; D-Menlo Park):** Carbon Dioxide Removal. Duplicates existing programs to create an added layer of compliance.

• **SB 697 (Hurtado; D-Sanger):** Extreme Increase to Anti-Trust Penalties. Increases certain anti-trust penalties for corporations by 100 times, despite working group on this issue being in progress and complete recommendations for legal updates not yet being released.

• **SB 1178 (Padilla; D-Chula Vista):** Unfair and Unenforceable Regulation. Attempts to impose California law on facilities outside of the state and nation. Makes industry wholly financially responsible for water quality impairments caused by other sources. Oppose Unless Amended.

• **SB 1404 (Glazer; D-Contra Costa):** Lobbyist Employer Audits. Substantially raises fees on lobbyists and others to continue to comply with state law.

A Look at California Workplace Violence Prevention Challenges, Lessons

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is a great resource but will only get you so far.

"It still requires a great deal of evaluation of where you are and identifying hazards, necessary improvements and more," she says. "And it also is very important to remember that you need to have a different plan for each site, because each site will have its own features and challenges related to the potential for workplace violence."

Watson shares her experience having

to create two separate Workplace Violence Prevention Plans for CalChamber's two very different locations, and then offers some advice.

"... The law requires you to have your staff involved and make it interactive and engaging, [and] this is something you really, really should do," she says, emphasizing that whoever is deemed responsible for the plan should not be the only person creating it. "I think it's really important that everyone gets involved. There are different perspectives, different views from employ-

ees ... so one thing I would encourage is maybe form a team or a committee and have regular meetings to go over the identifying points of the plan, the assessments, the hazards and things of that nature."

And this, Watson says, is why she thinks CalChamber's Workplace Violence Prevention Toolkit is such a great resource. "It's all laid out," she says. "There's a checklist and steps for the plan administrator to follow to ensure these things are not missed."

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California Dominance

California currently dominates the global AI industry. *Forbes* reports the state is home to 32 of the top 50 most promising privately held AI companies.

In 2023, AI-related startups in the San Francisco Bay Area received an estimated \$27.4 billion in investments — 52.6% of the global total — from seed, venture and private equity investors. Moreover, companies in the San Francisco Bay Area were responsible for 59% of AI-related job postings in the United States, according to data from late 2023 from Comprehensive.io.

Economic Impact

A look at current state tax revenue related to AI industry companies and the high-paying jobs of industry employees offers a glimpse at the potential fallout if the companies and related jobs are eliminated or move out of state, according to the analysis:

- California received an estimated \$17.6 billion in capital gains taxes in 2023, up from \$7.6 billion 10 years

earlier (a 32% increase), according to the California Department of Finance. While AI-related companies produced just a portion of this tax revenue, the growth of the industry is expected to be similar over the next decade.

- California's AI jobs are high-paying ones and generate significant tax revenue. In 2023 for just one AI-related sector, an annual average of 3,496 establishments were located in the state with annual employment of 111,259 and total wages of \$24 billion. The annual wage in the industry was \$215,968.

- Assuming single-filing status, the same AI-related sector generated about \$1.86 billion in California state income taxes in 2023.

Leaders in Opposition

In a *commentary for Fortune* on August 6, renowned computer scientist Dr. Fei-Fei Li said the bill was “well-meaning,” but warned that due to the penalties and restrictions the legislation sets on open-source development, SB 1047 will not just harm innovation in California, but in the entire country as well.

In an August 7 [letter to the author of SB 1047](#), Congresswoman Zoe Lofgren (D-San Jose) said that while she firmly supports AI governance to guard against demonstrable risks to public safety, “unfortunately, this bill would fall short of these goals — creating unnecessary risks for both the public and California’s economy.”

On August 16, former House Speaker Nancy Pelosi [issued a statement in opposition](#) to SB 1047, pointing out that, “AI springs from California. We must have legislation that is a model for the nation and the world. We have the opportunity and responsibility to enable small entrepreneurs and academia — not big tech — to dominate.”

Signing a statement of opposition to SB 1047 are academic AI researchers — faculty, postdoctorate, and graduate students of the University of California at Berkeley, Davis, Los Angeles, Riverside, San Diego, Santa Barbara, and Santa Cruz, and postdoctorate and graduate students of the University of Southern California and Stanford University. To read their statement, [click here](#).

Contact: Loren Kaye

CalChamber-Sponsored Seminars/Trade Shows

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Governor’s Office of Business and Economic Development (GO-Biz). September 3–5, Mexico City. [Diana Dominguez@gobiz.ca.gov](#).

Complying with U.S. Export Controls. Bureau of Industry and Security, Professional Association of Exporters and Importers. September 24–25, Milpitas. (408) 532-8234.

Encryption Controls. Bureau of Industry and Security, Professional Association of Exporters and Importers. September 26, Milpitas. (408) 532-8234.



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