

# ALERT

CALIFORNIA CHAMBER OF COMMERCE

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## Governor Outlines Strategy to Invest in State's Future



Governor Arnold Schwarzenegger

In his third State of the State address this week, Governor Arnold Schwarzenegger outlined a strategic approach to building the infrastructure California needs to assure continued economic growth and development.

The administration's renewed emphasis on infrastructure includes bond measures to fund a 10-year program to build new highways,

more vehicle lanes and improved transit options, as well as investing in measures to control pollution and relieve port congestion.

The Governor proposed increased funding to add capacity to and modernize the state's schools and higher education facilities. He called for the construction of new storage capacity to enhance the state's ability to deliver water to meet the needs of a growing population.

He also pointed to the need for the state to pay attention to its flood control systems, including maintaining the aging levee network.

The focus on infrastructure is well-

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## Workers' Compensation Reforms Under Attack

Three initiatives that propose to roll back the workers' compensation reforms achieved with bipartisan support in 2004 and implemented in 2005 were filed in December 2005 for title and summary at the Attorney General's office.

The California Chamber-supported reforms in Senator Charles Poochigian's (R-Fresno) SB 899 made several important changes to the workers' compensation system that have resulted in lower insurance premiums and better management of cases.

Some of the most important changes help contain medical treatment-related costs through the adoption of a medical provider network to be used by employers or their insurers; the use of national medical guidelines to assess the severity of injuries; and the ability to utilize pharmaceutical benefit manager networks.

### Proposals Undo Reforms

All three versions of the so-called "Worker Empowerment Act" propose to eliminate the use of medical provider networks, established under SB 899, and reinstate the ability of the injured workers and/or their advocates to, after 30 days, select a different doctor who would be granted a presumption of correctness.

Furthermore, all three proposals would undermine the ability of employers and insurers to utilize pharmaceutical benefit managers to help contain the cost of

*See Workers': Page 4*

## Committee Kills Common-Sense Business Bills



Two California Chamber of Commerce-sponsored bills designed to improve state labor laws have again been rejected by an Assembly policy committee.

The Assembly Labor and Employment Committee voted against AB 640 (Tran; R-Garden Grove) and AB 1709 (Wyland; R-Del Mar) on party-line votes.

### Workplace Flexibility

AB 640 would have helped employees achieve greater flexibility in work schedules by allowing individual workers to request and their employers to mutually agree to a four-day workweek. This flexibility is something survey after survey

shows employees want in a job.

The bill would have permitted an individual employee, with the consent of his/her employer, to work up to 10 hours per day within a 40-hour workweek, "with no set workweek." Overtime pay would not have been required in such a case.

Currently, California is one of only four states that do not conform wage laws to the national Fair Labor Standards Act (FLSA). The FLSA bases its overtime compensation requirements for salaried, non-exempt employees on total hours worked per week, rather than total hours worked per day.

Under current and very detailed California Industrial Welfare Commission (IWC) wage orders, employers may institute alternative work schedules only if the affected employees agree to the arrange-

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## Labor Law Corner

# Outside Sales Staff Considered Exempt Under Particular Circumstances



**Gary Hermann**  
Labor Law Consultant

*Our outside sales staff work out of their homes but spend most of their time selling to customers at the customer's place of business. Can sales staff be exempt if they are telecommuting and not required to work in our office?*

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### IWC Orders

The Industrial Welfare Commission (IWC) Orders define *outside salesperson* as an individual engaged in sales away from the employer's place of business more than half of his/her working hours.

So long as the individual spends more than half of his/her time away from the employer's place of business, and during that time is engaged in sales of tangible and intangible items or obtaining orders or contracts for products, services or use of facilities, the individual is not subject to the requirements of the IWC Orders.

Any fixed site, whether home or office, used by a salesperson as headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property.

### When Exemption Applies

If the activities of the individual during 50+ percent of his/her work time involves anything other than sales, the exemption will not apply.

As posed in the question, "most of their time" would appear to indicate more than half of the time, and if more than half of the employee's time is spent selling to customers at the customer's place of business or home, the exemption would apply.

Whether telecommuting activities from an employee's home would constitute exempt activities depends upon what the telecommuting consisted of and the amount of time involved.

## Chamber Calendar

*Luncheon Forum:*  
January 12, Sacramento

Outside sales does not include sales made by mail, telephone or the Internet, unless such contact is used merely as an adjunct to in-person calls. The time must be spent selling or in sales preparation.

### Definition of 'Sales'

"Sales" includes any sale, exchange, contract to sell, consignment of sales, shipment for sale or other disposition. It includes the transfer of title to tangible property. Sales promotion is considered sales activity.

Stocking of a vehicle with samples or advertising materials is considered a part of the sales promotion work so long as the samples or materials are not sold.

*The Labor Law Helpline is a service to California Chamber preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or e-mail: [helpline@calchamber.com](mailto:helpline@calchamber.com).*

## Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

A View of the Sacramento Region.  
Wilcox Miller & Nelson. January 10, Sacramento. (916) 977-3700.

### Labor Law

Labor Law Update Seminar. California Chamber of Commerce. January 19 - Sacramento; January 23 - Irvine; January 24 - Pasadena; January 25 - San Diego; January 30 - Oakland; January 31 - Santa Clara; February 7 - Sacramento. (800) 331-8877.

Labor Law Web Seminar. California Chamber of Commerce. February 21. (800) 331-8877.

**California Business Legislative Summit**  
April 25, Sacramento

Registration information at [www.calchamber.com](http://www.calchamber.com)



# Chamber Gives Businesses Recap of New Laws, Rules, Court Decisions

The California Chamber of Commerce is urging employers to be aware of new laws, regulations and important court decisions now in effect or that will take effect in 2006.

The Chamber uses its knowledge of laws and regulations to provide products and services to help businesses comply with both state and federal laws.

## Laws and Regulations

Starting January 2006, new laws will be in effect in the following areas:

- Final wages may be paid by direct deposit to an employee's previously authorized account, provided that all other requirements for payment of final compensation are met.
- Hearing notices for Labor Commissioner wage claim proceedings may be served by substitute service.
- The period for filing discrimination claims by minors under the Fair Employment and Housing Act (FEHA) is extended to one year from the minor's 18th birthday.
- A collective bargaining agreement for employees in the motion picture or broadcast industry (covered under Wage Orders 11 or 12) that provides meal periods and a monetary remedy if a meal period required by the agreement is missed, supercedes the Labor Code and applicable Wage Orders.
- Starting June 1, 2005, a new federal law requires proper destruction of documents that contain personal information of the type obtained in credit reports.
- Starting June 10, 2005, new regulations were implemented for injured workers seeking independent medical review of diagnosis and treatment recommendations of physicians within a medical provider network.
- Starting June 10, 2005, new regulations established the permanent disability rating schedule under workers' compensation reform legislation passed in 2004.
- Starting August 1, 2005, new regulations implemented the Supplemental Job Displacement Voucher program for injured workers with

permanent disabilities.

- Starting September 15, 2005, new regulations were established concerning care for injured workers by medical provider networks.
- Starting August 22, 2005, new regulations established safety guidelines for employees working outdoors who may be at risk for developing heat illness.

## Court Actions

Significant court actions also impose new responsibilities on employers:

- Failing to train managers involved in the hiring process as to when and how to make employment offers, or how to refrain from making unintended verbal offers or misstatements can result in significant company liability.
- Rude or aggressive supervisory conduct directed at one sex more frequently than another constitutes sexual harassment, as does conduct favoring employees who engage in sexual conduct with a supervisor.
- An employer may lawfully discharge an employee for using federally prohibited drugs even if use is protected by state criminal law.
- A California court shifted to employers the burden of proving that an employee or applicant is not qualified to work because of a disability in a claim filed under FEHA.
- An employee who refuses to carry out an order he/she reasonably believes to be discriminatory is protected from retaliation even if he/she never advises his/her employer of that belief.
- The Age Discrimination in Employment Act (ADEA) permits lawsuits based solely

on differential impact on older workers without the need to prove intent to discriminate.

- A California employer may deduct unearned commissions from future compensation advances without violating the California Labor Code.
- Corporate agents and managers acting within the scope of their agency are not personally liable under California law for their corporate employer's failure to pay its employees' wages.
- California law permits an employer to replace salary on an exempt employee's partial day off with time charged against the employee's vacation or paid time off (PTO) bank, provided the employee has such time available. This appeals court decision, however, conflicts with a position taken by the Division of Labor Standards Enforcement,

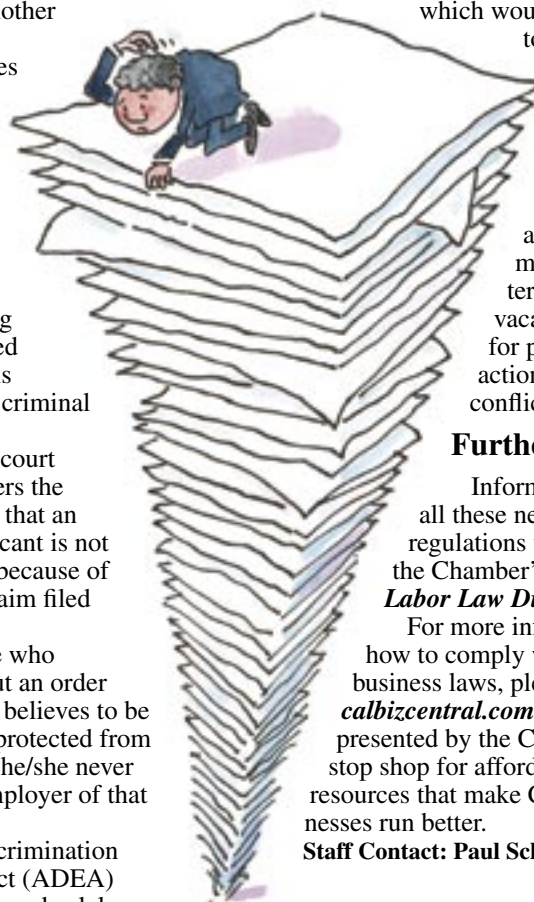
which would allow employers to replace such an employee's salary during a partial day off from available sick leave, but not from an accrued benefit that must be paid out at termination, such as vacation or PTO. Watch for possible legislative action to resolve this conflict.

## Further Information

Information about all these new laws and regulations will be covered in the Chamber's *2006 California Labor Law Digest*.

For more information about how to comply with California business laws, please visit [www.calbizcentral.com](http://www.calbizcentral.com). CalBizCentral,™ presented by the Chamber, is a one-stop shop for affordable compliance resources that make California businesses run better.

**Staff Contact: Paul Schechter**





## Sexual Harassment Prevention Training — It's Never Too Late

The deadline has come and gone for California employers to comply with a state law requiring all organizations with 50 or more employees, including contract personnel, to put all supervisory employees through sexual harassment prevention training.

**AB 1825 (Reyes; D-Fresno)**, required organizations to meet a January 1 deadline. By then, each supervisory employee needed to have done at least two hours of training unless they had received some sexual harassment prevention training during 2003 or 2004. Thereafter, companies will have to provide two hours of training every two years.

AB 1825 applies to all organizations — businesses, government and non-profits — with 50 or more employees. Failing to comply opens up employers to potential lawsuits. In all, an estimated 1.7 million California managers are required to receive training.

### Training Still Available

For businesses that have missed the January 1 deadline, and for those not affected by the requirement but interested in sexual harassment prevention training, the California Chamber of Commerce has a cost-effective, online "Preventing Sexual Harassment" training program to

meet the training requirement. More than 50,000 managers have completed the program since May 2005.

The Chamber's program effectively communicates what supervisory employees need to know to help prevent sexual harassment at a cost significantly less than in-person training programs.

The Chamber encourages all employers — not only those affected by the mandate — to get training on sexual harassment prevention.

More information on AB 1825 and all the Chamber's training programs is available at [www.calchamber.com](http://www.calchamber.com).

## Workers' Compensation Reforms Under Attack

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prescription drugs within the workers' compensation system.

Historically, there has been a debate about whether the workers' compensation system can be amended through the ballot process. All three proposals seek to end this debate by amending the state Constitution to clearly state that the workers' compensation system can be amended by both the Legislature and by initiative.

In addition, Version 3 of the initia-

tive proposes an increase in benefits for injured workers that could be greatly inflated by any prospective increase in the minimum wage.

Versions 1 and 2 of the initiative also include provisions that would eliminate workers' compensation as the exclusive remedy for injured workers and grant injured workers the ability to select between the existing system and an action at law or tort. In essence, injured workers would be able to sue their employer for injuries sustained at work.

### Chamber Vigilant

All three proposed initiatives are far from qualifying for the ballot. Once the Attorney General has issued the title and summary for the proposals, they will need to attain the requisite number of signatures.

The Chamber will continue to closely monitor these measures and will forcefully oppose any that do qualify and get placed on the ballot.

**Staff Contact: Dominic DiMare**

## Assembly Committee Kills Common-Sense Business Bills

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ment in writing and by secret ballot.

Employers must hold discussion meetings at least 14 days before voting. Two-thirds of the company's employees must agree to the change. Any deviation from the rigidly controlled process voids the election.

The rules also state that daily work schedules are limited to a maximum of 10 hours per day, with a four-hour daily minimum. Variances in schedules or the use of more than one schedule is prohibited without repeating the voting process.

### Plain Language

AB 1709 would have reduced confusion and would have increased under-

standing of workplace rights and responsibilities by requiring all state-mandated workplace posters to be written simply and in plain language.

California employers and employees need workplace posters that are easy to understand, contain clear definitions of obligations and make duties easy to administer and implement.

Plain and simple language in workplace rules ensures that employers know how to comply with the law and aids workers with knowledge if workplace rights have been violated.

### Chamber Position

The Chamber sponsored these common-sense reforms because easy-to-fo-

low workplace rules benefit both employees and employers by helping to improve compliance, decrease litigation, and strengthen the jobs climate in California.

### Key Vote

Assembly Labor and Employment failed to pass both AB 640 and AB 1709 on a 2-6 vote.

**Ayes: Nakanishi (R-Lodi); Houston (R-Livermore).**

**Noes: Chan (D-Oakland); Chu (D-Monterey Park); Klehs (D-Castro Valley); Koretz (D-West Hollywood); Laird (D-Santa Cruz); Leno (D-San Francisco).**

**Staff Contact: Dominic DiMare**

## U.S. District Courts Delay Implementation of Two California Laws Opposed By Chamber



Last month, federal judges delayed enforcement of two California Chamber of Commerce-opposed California laws that were to go into effect on January 1.

On December 20, 2005, U.S. District

Judge Morrison England imposed a stay on the new law placing onerous restrictions on fax communications (SB 833-Bowen; D-Redondo Beach; Chapter 667)

On December 21, 2005, U.S. District Judge Ronald Whyte delayed implementation of a new law limiting protected speech by prohibiting the sale and rental of certain video games to minors (AB 1179-Yee; D-San Francisco; Chapter 638).

### Fax Ruling

California's new law regulating certain

fax communications has been delayed until at least January 31, pending a January 23 hearing on the law's merits. At issue is the fact that the new law would conflict with recently implemented federal law, the Junk Fax Protection Act of 2005.

While the federal law provides exceptions for fax senders who have an "established business relationship" with the recipient, California law includes no such exception. This difference has implications nationwide, as California's fax law would apply to interstate faxes as well as intrastate faxes.

The Chamber classified SB 833 as a "job killer" and repeatedly asked that the author include the "established business relationship" exception in the bill. The author, however, declined to include that exception and keep the state law in line with the federal law. Such an exception would have protected legitimate California businesses from unnecessary fines and litigation while still protecting consumers from unsolicited advertising faxes.

The California law is being contested in *Chamber of Commerce of the United States of America v. Lockyer*.

### Video Game Ruling

The issue of free speech was the basis for Judge Whyte's decision to delay the implementation of AB 1179. The sale of video games is protected under the First Amendment to the Constitution and there has been no significant evidence linking violent video games to an increase in violent behavior.

The courts have been unanimous on this issue — this is the sixth time in five years that federal courts have blocked or struck down such state and local laws.

The California Chamber lobbied against AB 1179, arguing that it violates the First Amendment and places a significant burden on retailers to comply.

Enforcement of the new law has been delayed until further order of the court. The case is *Video Software Dealers Association v. Schwarzenegger*.

### Chamber Position

The California Chamber applauds the actions of the courts in these cases and agrees with the reasoning used to challenge the merits of both new laws.

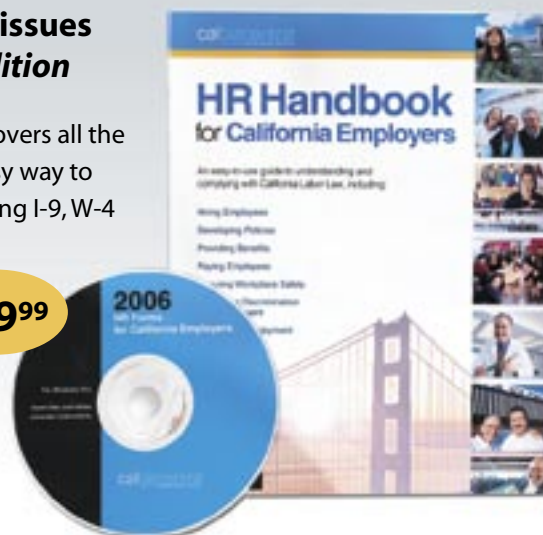
**Staff Contact: Valerie Nera**

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## Chamber Partners with *FORTUNE* to Tell State's Business Story

The California Chamber of Commerce is joining with *FORTUNE* magazine to give worldwide exposure to California businesses and their products, services and innovations.

### Innovation Theme

*FORTUNE* will feature California in a special section, "California: The Great Idea State," that will appear in the worldwide edition of the 2006 *FORTUNE 500* issue.

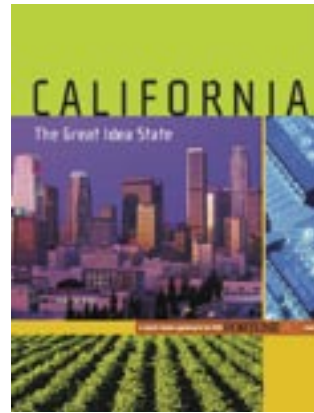
"Now is a good time to tell the positive story of California to the world's business leaders," said Chamber President Allan Zaremberg. "We have many success stories of innovation and production to showcase as we highlight the key reasons California is a great place for companies to do business."

Great ideas California has given

the world range from a cartoon mouse that grew to an international entertainment and tourist icon to the desktop mouse that put computer technology at the fingertips of close to 75 percent of the adults in the nation.

The magazine section will focus on the innovative forces in business, technology, health care, trade and agriculture that have made California one of the top 10 economies in the world.

The section also will tell the story of how California's climate — with its highly educated workforce, cutting-edge



technology, a diverse and creative labor force, and a historic tolerance for new ideas — has made it the place where great ideas and innovations come to life.

### Influential Readership

The *FORTUNE 500* worldwide edition has a global readership of more than 5 million. Sixty-five percent of *FORTUNE*'s readers are top corporate decision-makers.

Readers interested in more information about advertising in the special section can contact Dave Kilby, Chamber senior vice president, at [dave.kilby@calchamber.com](mailto:dave.kilby@calchamber.com).

## Governor Outlines Strategy to Invest in State's Future

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come news for the California Chamber of Commerce, which has emphasized to this administration from the beginning the continued importance of a sound infrastructure for the economy and business community.

"It is great news for all Californians that a strong economy has produced revenues to increase funding to education, transportation and other essential state

programs," said Donna Tuttle, chair of the Chamber Board of Directors. "Governor Schwarzenegger deserves credit for putting California's economy back on track so we can truly fund these key services."

Chamber President Allan Zaremberg also highlighted the Governor's commitment to strengthening the state's aging and inadequate infrastructure. "It is clear from recent floods, crowded freeways, crumbling schools and other problems

throughout our state that California's infrastructure needs a significant investment. It has been ignored for far too long, and the plan outlined by Governor Schwarzenegger is essential to keeping California's economy booming. His visionary leadership will help California and our economy prepare for the millions who move to our great state each decade."

**Staff Contact: Jeanne Cain**

## Federal Action Extends Terrorism Risk Insurance Act



The California Chamber of Commerce applauds federal action taken in late December extending the Terrorism Risk Insurance Act of 2002 (TRIA).

Congress passed the extension after reaching several compromises, and President George W. Bush

signed the Terrorism Risk Insurance Extension Act of 2005 during the last week of December. The act extends the TRIA for two years, through December 31, 2007.

The Chamber strongly supports TRIA

as a vital tool for preserving the stability of the economy. The ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices to spread the risk of both routine and catastrophic loss is critical to economic growth.

TRIA established a three-year risk-spreading program to back up the insurance marketplace for consumers in the event of a terrorist attack. The law covers most lines of commercial property casualty insurance, including workers' compensation, and business interruption for all U.S. risks. Safeguards ensure that

only truly catastrophic events trigger any federal involvement, while continuing to provide equal protection for small and rural insurers.

The business community, commercial insurance policy holders, insurance regulators and insurance carriers are all united behind the program's extension to ensure that the United States continues to have an effective economic safety net in place against terrorism.

For more information on the Terrorism Risk Insurance Act, visit [www.terrorism-riskinsurance.org](http://www.terrorism-riskinsurance.org).

**Staff Contact: Jeanne Cain**



## China Trade Mission

### McWong Technology Helps Shanghai Steel Plant Handle Wastewater

Wastewater treatment equipment from McWong Environmental and Energy Group (MEEG), a California Chamber of Commerce member, was the focus of one visit during the Governor's China Trade Mission in November 2005.

Margaret Wong, president and chief executive officer of MEEG, joined Governor Arnold Schwarzenegger in viewing the equipment during a tour of Baosteel outside Shanghai.

MEEG specializes in providing design, technology and equipment for wastewater treatment and sludge treatment for both municipal and industrial applications.

In remarks at Baosteel, the Governor called the wastewater treatment operation there "a perfect example of how California and China can work together."

The equipment supplied by McWong, the Governor noted, "incorporates some of the most advanced, effective energy and environmental technology in the world. This helps Baosteel clean, conserve and recycle the water that they use in their production, and is helping them save energy, to be more efficient and to reduce pollution."

Baosteel, the largest steel producer in China and the third largest producer in the world, is one of McWong's largest clients in China. MEEG has worked closely with Baosteel on many wastewater treatment projects over the years.

MEEG continues to work exclusively with the People's Republic of China.

Currently, MEEG's headquarters are located in West Sacramento, with offices in both Shanghai and Beijing.



Margaret Wong, president and chief executive officer of McWong Environmental and Energy Group, and Governor Arnold Schwarzenegger pause on steps leading to the top of wastewater treatment equipment McWong supplied to Baosteel (below), the largest steel plant in China, located outside of Shanghai.



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