Chamber Renews Effort to Improve State Laws

Commonsense Changes to Labor Law, Court Process

In keeping with its ongoing commitment to help California businesses do business, the California Chamber of Commerce will be sponsoring legislation this year to improve the workplace and streamline the court process.

The Chamber-sponsored bills aim to help individual employees achieve greater flexibility in work schedules, increase employee and employer understanding of workplace rights and responsibilities, and reduce court costs.

“The proposals sponsored by the California Chamber are commonsense changes in the law that will simplify everyday aspects of working and doing business in the state,” said Chamber President Allan Zaremberg.

“By adopting the labor law bills, legislators will help employers and employees deal with hectic schedules and better understand workplace rules,” Zaremberg said. “The bills dealing with the court process will make California policy once again consistent with all but one other state in the nation.”

Four-Day Workweek

- SB 1254 (Ackerman; R-Tustin)
  - Currently a placeholder bill, this soon-to-be-amended Chamber-sponsored bill will contain provisions to help employees achieve greater flexibility in work schedules by allowing individual workers to request and their employers to mutually agree to a four-day workweek.

- Chamber-sponsored AB 2217 (Villines; R-Clovis) also will help employees achieve greater flexibility in work schedules by allowing individual workers to request and their employers to mutually agree to a four-day workweek.

Assembly co-authors of AB 2217: Assemblymembers Dave Cogdill (R-Modesto), Chuck DeVore (R-Irvine), Ray Haynes (R-Murrieta), Bob Huff (R-Diamond Bar), Jay La Suer (R-La Mesa), Tim Leslie (R-Tahoe City), Bill Maze (R-Visalia), Dennis Mountjoy (R-Monrovia), Van Tran (R-Garden Grove), and Mark Wyland (R-Del Mar). Senator Dave Cox (R-Fair Oaks) is the Senate coauthor.

The Chamber sponsored similar legislation last year, AB 640 (Tran; R-Garden Grove). The Assembly Labor and Employment Committee rejected the proposal on a party-line vote (Republicans in favor, Democrats opposed) both last spring and again upon reconsidering the bills in January.

Plain Language Posters

Chamber-sponsored AB 2277 reduces confusion and increases understanding of workplace rights and responsibilities by requiring all workplace posters to be written simply and in plain language.

Joint authors of AB 2277: Assemblymembers Michael Villines (R-Clovis), Dave Cogdill (R-Modesto), Lynn Daucher (R-Brea), Chuck DeVore (R-Irvine), Tim Leslie (R-Tahoe City), Bill Maze (R-Visalia), Dennis Mountjoy (R-Monrovia) and Mark Wyland (R-Del Mar). The Senate co-author is Senator Dave Cox (R-Fair Oaks).

Legislators Revive, Expand Vetoed ‘Job Killer’ Proposals

The California Chamber’s ongoing review of the 1,000-plus bills introduced on the last day to submit legislation for this year so far has uncovered several variations on “job killer” proposals that were vetoed last year.

The Chamber will release its new “job killer” list after Chamber legislative advocates have completed their analyses of the numerous bills introduced this year.

The following proposals resurrect provisions in last year’s “job killer” bills.

UI Expansion

Two Assembly bills contain language expanding unemployment insurance (UI) benefits, as did last year’s vetoed “job killer,” AB 391 (Koretz; D-West Hollywood).

Like AB 391, both AB 1884 (Chu; D-Monterey Park) and AB 2209 (Pavley; D-Agoura Hills) increase the cost of doing business in California by forcing California employers to subsidize a strike against their own company by providing UI benefits to workers unemployed due to a strike.

In addition, AB 2209 provides that any employer/employee agreement that
We have an exempt employee currently in the first month of an introductory period. She is being called to jury duty next Monday at 10 a.m. Our policy does not allow for jury duty pay until the introductory period has been cleared. How do we pay this exempt employee?

First, No Discrimination
You should first be aware of Labor Code Section 230(a), which provides that an employee shall not be discharged or in any manner discriminated against for taking time off to serve on a jury.

This Labor Code section does not require you to pay for the time off, but it does forbid discharge or discrimination.

Codes Require Exempt Pay
Next to be considered are compensation requirements necessary to maintain exempt status for your employee. Both state Labor Code Section 515(a) and the federal Fair Labor Standards Act require that a salary be paid to an exempt employee.

The Labor Commissioner has stated in its Enforcement Policies and Interpretation Manual Section 51.6.21 that the federal regulations concerning salary basis found at 29 CFR 541.118(a)(4) will be followed.

Consequently, both state and federal law mandate that if an exempt employee works any part of a week and is called to jury duty, then the employee must be paid her/his salary for the entire week.

Non-Exempt Rules Differ
Non-exempt employees, unlike exempt employees, are not subject to state or federal compensation requirements. Your policy dictates whether you pay non-exempt employees jury duty pay.

Despite your policy, however, your exempt employee must be paid for the entire week if she works any part of that week.

Comprehending Complexities
Compensation requirements for exempt employees are complex. This subject is covered in Chapter 16 of the California Chamber of Commerce Labor Law Digest and also online at www.hr-california.com.

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.
Chamber-Supported Cell Phone Bill of Rights Wins Approval

The California Public Utilities Commission (CPUC) has passed a telecommunications Consumer Bill of Rights that recognizes the importance of competition in this ever-changing market.

The new “bill of rights” includes a new consumer education program, a new consumer fraud unit and additional hours and resources for consumers to contact the CPUC to receive answers and assistance.

Ensures Competition, Choice

The California Chamber of Commerce joined other business and industry groups in urging adoption of the proposal by CPUC President Michael Peevey because it will help ensure robust competition and consumer choice drive the telecommunications services market. Those characteristics will, in turn, ensure that California telecommunications customers will retain the service options and protections they want.

Adopted by a 3-2 vote of the CPUC, the Peevey approach recognizes that California already regulates telecommunications advertising, marketing practices, contract terms and conditions, and has the authority to take enforcement action against any fraudulent practices.

This measure also embraces a “technology neutral” approach that allows consumers to pick the technology — wireless, wire line, cable or other technology — that best fits their needs and avoids unintended consequences of layering on additional, unnecessary and confusing new regulations.

Step Forward

The newly adopted proposal is a step forward from the restrictive telecommunications regulations in the 1990s that resulted in reduced competition and significantly higher consumer prices for wireless services.

Over the past decade, wireless consumers have benefited from lower prices, expanded services options and increased quality that has resulted from robust competition in the California wireless market.

The “bill of rights” will encourage a vibrant industry to continue to support introduction of new products and services and empower consumers to make educated choices to meet their communication needs.

The wireless technology industry in California represents more than 20,000 companies, 60,000 jobs, and more than $3.5 billion in payroll. California is at the leading edge of wireless innovation and technology, which is fiercely competitive and consumer-driven.

Over the last five years, the number of wireless users has doubled to more than 190 million subscribers nationwide. In California, there are more than 23 million wireless customers. Customer satisfaction rates in wireless are extremely high. Actual complaint rates are a fraction of 1 percent, according to CPUC filings.

Staff Contact: Dominic DiMare

California Chamber Seeks Small Business Advocate Award Nominees

The California Chamber of Commerce has opened nominations for its Small Business Advocate of the Year award.

Nominees should have contributed significantly as an advocate for small business by being involved in such activities as taking leadership roles in or working on state or local ballot measures, testifying before the state Legislature, representing a local chamber of commerce before local government, and being actively involved on federal legislation.

Private sector, for-profit businesspersons who have been actively involved in local, state or federal issues or political action would be excellent nominees. Chamber of commerce executives, government employees and association executives are not eligible.

The application for the award must include a letter of recommendation from a local chamber president or chair of the local chamber board of directors. News articles or other materials may be attached to the application as exhibits.

Deadline

Award applications are due to the Local Chamber Department of the California Chamber by March 13.

The Chamber will recognize award winners at its Business Legislative Summit on April 25 in Sacramento.

Nomination forms may be requested from the Local Chamber Department at (916) 930-1202.
Legislators Revive, Expand Vetoed ‘Job Killer’ Proposals

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The Chamber opposes both AB 1884 and AB 2209.

In vetoing AB 391 last year, Governor Arnold Schwarzenegger noted that UI benefits “are predicated on the principle that workers should receive assistance when they have lost their job through no fault of their own.”

That principle, the Governor’s veto message continued, “is key to maintaining the balance that prevents both employers and workers from taking precipitous actions to affect unemployment insurance payouts.”

AB 391, the Governor said, “disrupts that balance by allowing workers to receive unemployment benefits when they have initiated the process for a strike that results in a lockout.” He pointed out that current UI law already protects workers from lockouts called by an employer when there is no strike notice.

Excessive Litigation

Like last year’s “job killer” AB 169 (Oropeza; D-Long Beach), Chamber-opposed AB 2555 (Oropeza; D-Long Beach) negatively distinguishes California from the rest of the country by exposing every business to excessive litigation and increases the cost of doing business by mandating damage awards and new civil penalties for gender pay equity violations. In addition, AB 2555 imposes new, unreasonable paperwork burdens on employers.

In his veto message on AB 169 last year, the Governor said neither AB 169 or its 2004 predecessor, AB 2317 (Oropeza; D-Long Beach) — also considered a “job killer” by the Chamber — are needed to achieve a goal he supports, “reasonable efforts to eradicate the historical trend of women earning less than men for doing the same work.”

The Governor said: “Current state and federal laws forbid paying an individual lower wages on account of gender and provide stiff civil and criminal penalties against employers that do so. The elimination of judicial discretion to modify

the penalty, coupled with the massive increases in fines will do nothing more than increase frivolous litigation and could lead to the same ‘shakedown’ lawsuits that the citizens of California voted to curb last year by passing Proposition 64.”

Minimum Wage Indexing

Last year the Governor vetoed AB 48 (Lieber; D-Mountain View), a Chamber-opposed “job killer” providing significant disincentive for employers to create jobs in California by giving our state the highest minimum wage in the country. AB 48 would have increased the cost of doing business by billions of dollars annually by raising the state minimum wage to $7.25 in 2006 and to $7.75 in 2007, and indexing increases every year thereafter.

This year, legislators have introduced three Chamber-opposed variations on that theme with different implementation dates:

● AB 1835 (Lieber; D-Mountain View) raises the state minimum wage to $7.25 in 2007 and to $7.75 in 2008, and indexes increases every year thereafter.

● AB 1844 (Chavez; D-La Puente) also proposes raising the state minimum wage to $7.25 in 2007 and to $7.75 in 2008, and indexes increases every year thereafter.

● SB 1162 (Cedillo; D-Los Angeles) boosts the state minimum wage to $7.25 on September 1, 2006, and to $7.75 on July 1, 2007, and indexes increases every year thereafter.

In vetoing AB 48 last year, the Governor commented that the minimum wage has not been increased since 2002, and he believes an increase is now appropriate.

He emphasized, however, “I have also made it clear that I do not support automatic increases to the wage that relieve elected officials of their duty to consider all of the impacts each increase to the wage will have on workers and businesses.”

The autopilot mechanism “fails to account for changes in the economy,” the Governor noted, “which could have deleterious effects on the economic health of the state.” He pointed out that although there have been many downward economic cycles in the last 50 years, “the inflation rate identified in the bill has never gone down since the state began collecting the information in 1955. Clearly, using static economic data does not account for the inevitable downward cycles and would provide increases when the private sector can least afford them.

“Furthermore, minimum wage increases must not be put on autopilot or examined in a vacuum but reviewed in conjunction with other wage and hour issues that impact workers and businesses. For example, California has the most inflexible workplace scheduling rules in the country. These inflexible rules discourage the use of alternative schedules that allow workers to work fewer days every week, avoid peak commute times, and spend more time with their families. In addition, California businesses have been unreasonably hampered by the Byzantine labor law defining employer classifications.”

Staff Contact: Julianne Broyles

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Similar Chamber-sponsored legislation, AB 1709 (Wyland; R-Del Mar), was rejected by the Democratic majority in Assembly Labor and Employment last spring and again in January.

Streamlining Court Process

The Chamber also is sponsoring two bills to help protect employers from escalating litigation costs.

Chamber-sponsored AB 2258 (Villines; R-Clovis) and SB 1386 (Morrow; R-Oceanside) help reduce court costs and streamline the judicial process by permitting both parties to voluntarily agree to take any disputes before a judge for a “bench trial,” rather than a jury, if they have a dispute. Jury trials usually are longer and more expensive than bench trials.

For updates on these proposals as they move through the legislative process, use the “Bill Tracking” feature in the Government Relations section at www.calchamber.com.

Staff Contacts: Julianne Broyles
Kyla Christoffersen
ChamberPAC Building Momentum in Campaign for Pro-Jobs Candidates

ChamberPAC, the California Chamber of Commerce bipartisan political action committee, is continuing to build momentum this election year in its efforts to identify and campaign for pro-jobs candidates.

“Anti-employer forces are gearing up for a roll-back attack, threatening our hard-earned workers’ compensation reforms,” said Michele Zschau, Chamber vice president of public affairs. “Our pro-jobs agenda is more urgent than ever as we prepare for the primary elections and help elect candidates who will support the interests of the employer community and protect our gains.”

Ongoing Battle

The success of the Chamber-led battle to secure workers’ compensation reform has reduced costs, enabling employers to invest savings in their businesses and create jobs.

Nevertheless, various groups are attempting to roll back the reforms through the initiative and legislative processes and reverse the benefits that employers have realized.

While the Chamber’s policy team is working diligently to protect the successes achieved through workers’ compensation reform, employer support is critical to their efforts. California must elect legislators who will champion policies and legislation that put jobs and the economy first.

ChamberPAC is in a unique position to accomplish this goal with its ability to pool and leverage the resources of the business community.

Primaries Especially Critical

ChamberPAC has an 82 percent success rate in supporting winning candidates. This election year, however, poses especially difficult challenges.

The way political districts are drawn virtually guarantees re-election to the incumbent party. Therefore, the competition for most legislative seats occurs in the primary elections, with the advantage going to candidates at both ends of the ideological spectrum because strongly ideological voters have a higher turnout rate in primaries.

Accordingly, the primary is where the business community needs to focus its resources to get the most employer-friendly candidate across the finish line.

“Trial lawyers and labor unions have deep war chests to spread their influence, challenging ChamberPAC with the expensive task of ensuring the ‘voice of business’ isn’t washed away,” said Zschau. “With the 2006 primary elections just around the corner, employer contributions and urgent support are vital for advancing like-minded candidates to the general election.”

Online Information

To learn more about ChamberPAC or to contribute online, visit www.calchamber.com/chamberpac. Questions should be directed to Michele Zschau at (916) 444-6670 or michele.zschau@calchamber.com.

Staff Contact: Michele Zschau

Bill to Quantify Rule Burden on Small Business Needs Employer Support

The California Chamber of Commerce is supporting legislation that orders an in-depth study focusing on the effects of regulatory red tape on California small business, and to make recommendations on how to mitigate red-tape burdens in the future.

AB 2330 (Arambula; D-Fresno) requires the Office of the Small Business Advocate to commission a study of the cost impact of state regulations on California small businesses.

The Chamber believes AB 2330’s provisions are vitally important to California small business owners because the burden of “one-size-fits-all” regulations almost always falls most heavily on them.

California small businesses contend with the most stringent, complex, and costly tangle of laws in the nation.

The Chamber believes that ill-advised or unnecessary laws and regulations can easily damage the economic vitality that small businesses add to the state’s economy. Laws and regulations have consequences, sometimes directly at odds with the intentions of the policymakers. Worse, an overly burdensome regulatory environment can quash the entrepreneurial spirit that motivates many small business owners in California.

Small Business Creates Jobs

Of the 3,320,977 small businesses in California, more than 960,000 are minority-owned and more than 871,000 are women-owned, according to the U.S. Small Business Administration (SBA).

The agency’s most recent figures show that small business creates 65 percent or more of net new U.S. jobs and generates more than 50 percent of the U.S. non-farm private gross domestic product (GDP).

Regulatory Burden

Unlike larger businesses, small businesses don’t have the luxury of a full time regulatory compliance staff. In fact, no fewer than three major studies completed recently show that regulatory mandates and costs have a disproportionate impact on small businesses. These reports include:

- Joseph Johnson’s A Review and Synthesis of the Cost of Workplace Regulations (August 2001),
- Tom Hopkins/Mark Crain’s study on
Chamber-Led Coalition Seeks Clarification of Emission-Reduction Economic Analysis

A California Chamber of Commerce-led coalition is asking the state’s Climate Action Team (CAT) to release data used in an economic analysis of a draft report proposing ways to reduce greenhouse gas emissions.

Critical Review

A critical review of the CAT draft “Economic Analysis” concluded that the study’s findings are “not convincing” due to its general lack of documentation and supporting data, as well as inadequacies in the explanation of its methodology.

The Sustainable Economy and Environment for California (SEE California) coalition, of which the Chamber is a founding member, commissioned the critical review, which was conducted by the Sacramento Regional Research Institute (SRRI).

The SRRI review also found that the CAT economic assessment “does not provide an adequate analysis of whether Executive Order S-3-05 (the Governor’s order establishing greenhouse gas emissions targets) will generate a net cost or benefit to the state.”

The CAT, led by the secretary of the California Environmental Protection Agency and made up of representatives from a number of state agencies, has been assigned to report on the state’s progress toward meeting greenhouse gas targets established in the executive order. Its first report is due to the Governor and Legislature this spring.

Data Needed

“It is critical that any public policy debate on greenhouse gas emissions reduction legislation or policy be based on comprehensive and widely accepted economic modeling,” said Chamber President Allan Zaremberg.

To allow for a true assessment of the accuracy of the CAT analysis, SEE California is requesting the CAT to immediately release all documents and data regarding the analysis’ methodology, economic inputs, models and findings.

“Additional background documentation on the CAT Economic Analysis will allow for peer review and additional studies to determine if the report’s optimistic findings are accurate,” Zaremberg said.

Critical Review

Specific findings of the SRRI report (available at www.srri.net) include:

- The CAT should avoid making conclusions on the economic impacts of potential emission reduction strategies when the basis for its Economic Analysis is admittedly changing and incomplete.
- The CAT Economic Assessment is deficient in a number of critical study areas and does not provide adequate analysis of whether Executive Order S-3-05 will generate a net cost or benefit to the state.
- The findings in the Economic Assessment are not convincing due to a general lack of documentation and transparency in the analysis.
- Findings unique to the CAT report and other uncommon findings should be better addressed.
- There are unique aspects of the report that would act as good building blocks for generating a more complete and accurate analysis.
- The CAT should release the information required to complete a more comprehensive critical review.

Coalition

SEE California is a coalition of trade associations and businesses that support addressing climate change impacts on California in a reasonable and responsible way, and will work to ensure that efforts to reduce greenhouse gas emissions take into account direct impacts on California jobs, economy and the environment.

Staff Contact: Jeanne Cain

Bill to Quantify Rule Burden on Small Business Needs Employer Support

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The Impact of Regulatory Costs on Small Firms (October 2001):

In addition, a September 2005 report prepared for the SBA by researchers at Lafayette College, The Impact of Regulatory Costs on Small Firms, states, “small businesses continue to bear a disproportionate share of the federal regulatory burden,” and finds that the annual cost per employee for firms with fewer than 20 employees is $7,647, compared to $5,282 spent by firms with more than 500 employees.

Studies also have shown that the disproportionate cost impact of regulations on small business is far higher at the state level. A 2004 report by researchers at the Pacific Research Institute found California to have the highest regulatory burden to economic freedom in the country.

Action Needed

The Chamber believes AB 2330 provides a positive process to ensure state regulatory agencies know the true impact their rules or regulations have on California small businesses.

Strong support is needed from the employer community to get this proposal through the Legislature.

Contact your legislators today and urge them to support efforts to understand and quantify the effects of state laws on small businesses and their ability to maintain and create jobs.

Staff Contact: Julianne Broyles
Chamber-Supported Trade Agreement with Peru Pending Before Congress

The California Chamber of Commerce-supported U.S.-Peru Free Trade Agreement (FTA) is pending before Congress and may be voted on this spring.

Benefits to State, Nation

“The U.S.-Peru Free Trade Agreement will benefit those of us in California and the United States as a whole,” said Susanne Stirling, Chamber vice president of international affairs. “Agreements like the proposed U.S.-Peru FTA ensure that the United States may continue to gain access to world markets, which will result in an improved economy and additional employment of Americans.”

California is one of the 10 largest economies in the world with a gross state product of approximately $1.4 trillion. International-related commerce accounts for approximately one-quarter of the state’s economy. Export-supported jobs account for more than 10 percent of California’s total private sector employment — about one in 10 jobs.

U.S.-Peru Trade Potential

Peru is the third largest country in South America and is approximately three times the size of California. Peru is the fifth most populous country in Latin America and has an annual gross domestic product (GDP) of more than $67 billion.

Peru’s economy is one of the most dynamic in Latin America, showing particularly strong growth over the last three years. Recent economic expansion has been driven by construction, mining, investment, domestic demand and exports.

Total trade in 2004 between Peru and the United States was $5.8 billion, with the United States exporting $2.1 billion worth of goods to the nation. About 200,000 U.S. citizens visit Peru annually for business, tourism and study. Nearly 16,000 Americans reside in Peru, and more than 400 companies are represented in the country.

In 2004, California exported $117 million to Peru, making it California’s 49th largest trading partner. California’s main exports to Peru include computers and electronic products, machinery, and agriculture. California is one of the top exporting states to Peru, after Texas and Florida.

Possible U.S.-Andean FTA

The United States launched free trade negotiations with Peru, Columbia, Ecuador and Bolivia in November 2003. The combined population of these four countries is 93 million, and the collective GDP is $507 billion.

Earlier this month, an agreement was reached on a U.S.-Columbian FTA, the second FTA with an Andean country, with a goal of creating an inclusive agreement, a U.S.-Andean FTA. Negotiations with Ecuador are expected to resume this month.

Issues negotiated in the Columbian FTA include agriculture and intellectual property rights. Other topics discussed included investment, intellectual property rights, textiles and rules of origin.

Most Andean exports to the United States have duty-free status under a special arrangement aimed at boosting the regions’ economies; however, FTAs are more comprehensive and do not require ongoing U.S. congressional reauthorization. U.S. exports to the region currently have an average 12 percent tariff.

The U.S.-Andean FTA will expand on the Andean Trade Promotion and Drug Eradication ACT (ATPDEA), signed by President George W. Bush in 2002. The ATPDEA is an amended version of the Andean Trade Preference Act, which was extended through 2006 and provides the four Andean countries with duty-free access to U.S. markets for more than 6,000 products.

Send a Letter

The Chamber, in keeping with longstanding policy, enthusiastically supports free trade worldwide, 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.

New multilateral, sectoral and regional trade agreements ensure that the United States may continue to gain access to world markets, resulting in an improved economy and additional employment of Americans.

For more information on international trade issues, or to find a sample letter in support of the U.S.-Peru and U.S-Andean FTAs, visit www.calchamber.com/international.

Staff Contact: Susanne Stirling
Sexual Harassment Training Is Mandatory

Providing sexual harassment training to your supervisors is not just the law, it’s good business. California law AB 1825 mandated two hours of sexual harassment training for supervisors before January 1, 2006, for companies with 50 or more employees. If you missed the deadline, training is still available.

Preventing Harassment in the Workplace online training helps you meet the mandatory requirements the easy way:

- Significant savings over in-person training
- Supervisors can train at their own pace
- Questions go directly to the course instructor, a legal expert
- Record-keeping tools track who has taken the course and automatically e-mail reminders to those who haven’t completed it

To order, visit www.calbizcentral.com or call (800) 331-8877.