



# Chamber Backs Robust Review of Workers' Compensation Data

A review of 18 months of experience with the permanent disability rating schedule adopted to implement the workers' compensation reforms is a necessary precursor to considering whether changes are needed, the California Chamber of Commerce testified this week.

The 18-month review period is consistent with a lot of the thinking that went into discussions before the reforms were enacted and as the regulations to implement the reforms were adopted, said Dominic DiMare, Chamber vice president of government relations, at an informational hearing of the Senate Labor and Industrial Relations Committee.

An 18-month review also will provide at least a little time to allow the return-towork provisions of the reforms to work.

Citing anecdotes of individual workers' experience with the new permanent disability rating system, some legislators and representatives of labor and applicant attorney groups are arguing that changes need to be made immediately.

The new permanent disability rating schedule went into effect at the beginning of 2005.

#### **Cost-Saving Reforms**

The Chamber-supported reforms in the 2004 legislation, SB 899 (Poochigian; R-Fresno) made fundamental changes in the way the workers' compensation system determines the level of See California: Page 4

## 'Take Action Now' at Legislative Summit's Grassroots Breakout Session on April 25

Building and honing participants' grassroots advocacy capabilities will be the focus of a morning breakout session at the California Chamber's Business Legislative Summit on April 25 in Sacramento.

"Take Action Now — Building Knowledge from the Ground Up' will introduce participants to some of the sharpest minds in grassroots in an interactive format.

Session speakers representing employers, local chambers of commerce and elected officials will share timely and practical information on grassroots advocacy, including:

 best methods for contacting local and state elected officials;

- tips for recruiting new advocates;
- best uses of technology for grassroots advocacy.

Serving as session moderator will be Jessica Smith, the California Chamber's new grassroots coordinator.

Smith is assigned to enhance the Chamber's grassroots network through-

The session is sponsored by the Long Beach Area Chamber of Commerce.

#### **Forum to Meet with Peers**

The Summit provides business and local chamber leaders a forum to meet with peers and state policy experts and See Legislative: Page 3

## Chamber Asks State High Court to Settle Meal/Rest **Penalty Question**



The California Chamber of Commerce has asked the state Supreme Court to settle a disagreement on interpreting state law governing meals and rest periods.

In a friend-of-

the-court letter urging the California Supreme Court to accept review in the case of National Steel and Shipbuilding Company v. Superior Court, the Chamber and other employer groups are asking the Supreme Court to decide that the payment required for violation of a meal or rest period requirement is a penalty — as was ruled in an earlier case — not a wage.

#### **Conflict**

The 4th District Court of Appeal ruling in the National Steel case conflicts with an earlier case now pending before the Supreme Court.

In its recent 2-1 decision, the 4th District said that the payment for violating a meal or rest period requirement is a penalty in the form of a wage. The court also concluded that such

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## Labor Law Corner

## Many Conditions Restrict Release of Employee Information



Jessica Hawthorne Assistant Employment Law Counsel

Am I authorized to release employee information to any additional parties? If not, is there any party to whom I am required to disclose employee information?

Many issues must be considered relating to whom employee information may be released and under what circumstances.

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### **Employee Information**

First to be clarified is what constitutes employee information. Generally referred to as "personnel information," it is data maintained by the employer in relation to an individual's employment in his/her personnel file.

Personnel information includes, but is not limited to:

- employment applications;
- reference letters;
- employment agreements/contracts;
   and
  - evaluations.

### **Third Party Rights**

California law has stated unequivocally that one's right to privacy is a personal and fundamental right under the state Constitution.

Personal information in a personnel file, therefore, must be maintained and disseminated only under specified circumstances and under strict limitations, and employers have a duty to protect the confidentiality of personnel records and limit disclosure to only individuals with a legitimate right of access.

Employment laws require that under certain circumstances, however, personnel information must be released, even without employee authorization, such as upon a request from the district attorney relating to child support obligations.

#### **Lawfully Issued Subpoenas**

A subpoena requesting employment records must be in strict compliance with legal requirements. If an employer receives a subpoena that does not appear to be consistent with the following requirements, the employer should contact legal counsel prior to responding to the subpoena.

A valid subpoena contains the following:

- The party issuing the subpoena must serve a copy of the subpoena on the employee whose records are being sought and a copy of any affidavit supporting the issuance of the subpoena.
- The party issuing the subpoena must serve the employee whose records are being sought at his/her last known address or, if known, to the employee's attorney of record.

- If the employee is requesting the documents, the subpoena must be accompanied by an affidavit signed by the employee, or his/her attorney of record, authorizing release of the employment records.
- The subpoena must be issued at least 15 days prior to the date the subpoena specifies for producing the employment records.
- The employer must receive the subpoena and a copy of the affidavit that supports the subpoena. Alternatively, the employer may accept a release of those records signed by the employee.

#### **Accompanying Subpoena Notice**

Every copy of the subpoena and accompanying affidavit served on an employee or his/her attorney must be accompanied by a notice, in a typeface designed to call attention to the notice, indicating:

- employment records about the employee are being sought from the employer, as named on the subpoena;
- the employment records may be protected by a right of privacy;
- if the employee objects to the witness furnishing the records to the party seeking the records, the employee shall file an objection with the court prior to the date specified for production on the subpoena; and
- if the subpoenaing party does not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the employee's interest in protecting his/her rights of privacy.

If you are unsure whether release of personnel information is appropriate, be sure to consult legal counsel.

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.

calchamber.com







# Legislative Summit's Grassroots Breakout to Help Attendees 'Take Action Now'

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to focus on priority legislative issues facing California business.

The event's dual aims are to empower attendees to be active players in the legislative process and to present the business perspective on policy issues affecting California business' bottom line.

Close to 1,000 businesspeople from throughout the state are expected at the day-long event.

#### **Opening Speakers**

Governor Arnold Schwarzenegger and California Chamber Chair Donna F. Tuttle will open this year's Summit at the Sacramento Host Breakfast. This year marks the 80th such event sponsored by the Sacramento Host Committee.

The goal of this "granddaddy of Sacramento power breakfasts," as it once was described, is to offer decision-making leaders in California finance, government, education, agriculture and industry the opportunity to exchange views, establish and renew friendships, and create statewide atmospheres of good will and understanding throughout the business community.

Expected attendance at this year's Host Breakfast is likely to exceed 2,000.

## **Legislative Summit Events**

Following the Host Breakfast, Summit attendees can choose from a number of breakout sessions, including the grassroots advocacy session, that focus on timely business issues. General sessions will include a recap of priority issues by California Chamber President Allan Zaremberg and a town hall session with key state leaders.

State legislators are invited to join their constituents at the Summit luncheon, which also features presentations acknowledging outstanding advocacy by small business owners and local chambers of commerce; the HR Partner of the Year; and local chambers that have supported the California Chamber's candidate political action committee, ChamberPAC.

#### **Volunteer Leaders**

On April 24, the Western Association of Chamber Executives joins the California Chamber in sponsoring the Volunteer Leaders Conference.

The conference, designed for business leaders involved in local chambers,

## Chamber Calendar

Volunteer Leaders Conference:
April 24, Sacramento
Fundraising Committee:
April 24, Sacramento
Transportation Committee:
April 24, Sacramento
Taxation Committee:
April 24, Sacramento
Water Resources Committee:
April 24, Sacramento
Board of Directors:

April 24, Sacramento California Business Legislative Summit: April 25, Sacramento provides insights and tools for attendees to enhance leadership skills and promote action-oriented chamber management.

Following the conference, the Host Committee sponsors the evening Host Reception for business and community leaders.

#### Registration

The deadline to register is April 11. For more information on the Summit or to register, visit *www.calchamber.com* or e-mail *events@calchamber.com*.

Staff Contact: Amy Orr

## Seminars/Trade Shows

For more information on the seminars listed below, visit www.calchamber. com/events.

#### **Business Resources**

Sustainable Enterprise Conference (SEC 2006). Sonoma State University Business Department. April 7, Rohnert Park. (707) 664-2228.

Working Within the Public Sector.
Wilcox Miller & Nelson. April 11,
Sacramento. (916) 977-3700.

#### Labor Law

Managing Leaves of Absence Web Seminar. California Chamber of Commerce. April 27. (800) 331-8877.

#### International Trade

Hong Kong: Turning China Into Opportunity. Hong Kong Trade Development Council. March 27, Los Angeles. (213) 622-3194, ext. 200.

# California Business Legislative Summit

April 25, Sacramento







Special thanks to our Major Sponsor **Wells Fargo Bank** 

Registration information at www.calchamber.com



## California Chamber Backs Robust Review of Workers' Compensation Data

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injury and the amount of disability assigned to an injury. The bill also allowed for the creation of new medical networks to provide quality, cost-effective care to workers. This package ensured that medical treatment follows nationally recognized guidelines and sets clear parameters for what is acceptable treatment for injured workers in the system, while also reducing excessive litigation.

New system incentives encourage employers to bring the injured workers back to work, while new medical guidelines encourage medical practitioners to discontinue medical procedures that have no merit.

DiMare commented that the reformed system has been an improvement from the employer's perspective, leading to significant premium reductions, enabling the business community to thrive and create jobs.

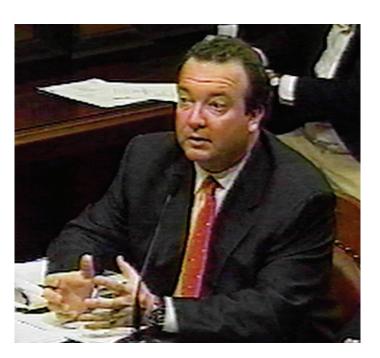
Just this week, the Workers' Compensation Insurance Rating Bureau recommended another double-digit decrease — 16.4 percent — in workers' compensation premiums renewing or beginning on July 1.

#### **Return-to-Work Experience**

Analyzing the impact of the new permanent disability rating schedule means looking both at the benefit payments and the ultimate impact of the injury on the injured worker's wages — the wage loss ratio.

Carrie Nevans, acting director of the state Division of Workers' Compensation,

Dominic DiMare, vice president of government relations for the California Chamber of Commerce, supports an 18-month review of experience with the new permanent disability rating schedule adopted as a result of the workers' compensation system reforms before the state decides whether changes need to be made. DiMare spoke at an informational hearing of the Senate Labor and Industrial **Relations Committee.** Some legislators and representatives of labor and applicants attorneys are calling for changes to be made immediately.



said the division doesn't yet have a good body of statistics showing how the reform incentives for returning injured workers to work are affecting the wages of those workers. An 18-month review period (that is, one ending June 30 of this year), she said, would permit a follow-up look one year later at the experience of injured workers who filed claims during the first six months after the new permanent disability rating schedule went into effect at the beginning of 2005.

DiMare cited researcher comments indicating that it could take 18 to 48 months of experience with the new rating

schedule to accumulate acceptable data on how it is working. In light of those comments, DiMare said, 18 months is not an unreasonable time frame for gathering the data on the impact of the new permanent disability rating schedule before determining if modifications should be made.

The Chamber supports the Division of Workers' Compensation conducting an aggressive and robust review of the data and then, if necessary, making changes to the permanent disability schedule.

Staff Contact: Marti Fisher

## Chamber Asks State High Court to Settle Meal/Rest Penalty Question



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payments are
subject to both a
three-year statute
of limitations
(therefore making
the employer
liable for up to
three years of
back pay) and a
four-year statute of
limitations under

the state's unfair competition law if there

is an alleged failure to make the payment.

#### **Penalty**

In the earlier case, *John P. Murphy v. Kenneth Cole Productions, Inc.*, the 1st District Court of Appeal found that the payment is a penalty.

The Chamber and other employer groups argued in the *Kenneth Cole* case that more than 100 years of California case law clearly point to the payment requirement being a penalty.

In addition, the employer brief noted

that legislative discussions leading to the adoption of the payment requirement identified it as a penalty, as did analyses of later proposals to amend that section of the law.

Following the 4th District ruling, the Chamber and other employer groups are asking the Supreme Court to consider the *National Steell* case together with the *Kenneth Cole* case, which the court has already agreed to review.

Staff Contact: Erika Frank



# Chamber Members Well Represented on *Inc*. Fastest-Growing Company List

Twenty-one members of the California Chamber of Commerce have made the 2005 rankings of the nation's 500 fastest growing companies in the country, according to *Inc.* magazine.

Companies in the *Inc.* 500 are selected through measurements of their revenue growth over a three-year period, from the end of 2001 to the end of 2004. Companies must have had four full years of sales and been U.S.-based, privately held and independent as of December 31, 2004, to qualify for consideration.

The following Chamber members made the *Inc.* 500 list. Company head-quarter locations are noted in parentheses.

### **Fastest-Growing Members**

- 2Wire (San Jose). Ranked 101. 2Wire develops hardware, such as cable television boxes and gateways, to deliver broadband service and content to homes and small businesses. The company came early to the market with "triple-play" hardware (in which phone, cable and Internet service all come through the same line)
- AbsoluteHire (Roseville). Ranked 124. AbsoluteHire develops and markets technologies for conducting job applicant background checks for large and small companies. Revenue growth is related to an upswing in the number of companies using background checks 85 percent today, up from 25 percent in 2000, according to the Society for Human Resource Management.
- The Active Network (San Diego). Ranked 246. The Active Network provides customized technologies, marketing campaigns and partnership building services for event planners with community groups, non-profits and a wide variety of other groups. The market is vast for a company providing event planning outsourcing solutions, and The Active Network is thriving.
- Budget Blinds (Orange). Ranked 156. The company supplies and installs residential window coverings. Business is booming because of the huge home decorating and remodeling trend sweeping the country, and Budget Blinds' more than

900 franchises are right in the midst of it.

• Calypso Technology (San Francisco). Ranked 440. Calypso Technology makes software for global financial institutions to manage all aspects of front-to-back office functions, from foreign ex-



change to commodities to bonds to credit derivatives. Calypso, a global company, is able to respond to global financial markets' love of ever-advancing technologies.

- Evolve Manufacturing Technologies (Mountain View). Ranked 12. This company does contract manufacturing for semiconductor and medical equipment companies. Evolve Manufacturing has achieved much of its more than 3,000 percent revenue growth from receiving outsourcing from other tech companies.
- FlexCorp Systems (New York City). Ranked 119. FlexCorp Systems manages contingency labor pay, benefits and other administrative needs for Fortune 1000 companies. The company's pricing strategy offering a flat transaction fee rather than charging a percentage of worker salaries is key to its success.
- Insulair (Vernalis). Ranked 237. This firm specializes in producing patented triple-wall paper cups that insulate hot and cold beverages. Insulair formerly sold only to coffee chains and convenience stores, but it has expanded into more than 1,200 stores in the retail marketplace. The company's revenue has grown 498 percent over three years.
- Integrity Applications Inc. (IAI) (Chantilly, VA). Ranked 353. IAI pro-

vides intelligence organizations with software that uses satellite data to create 3-D images that guide precision bombs. Chief Executive Officer Joseph L. Brickey was a member of the intelligence community and assures IAI's products meet the immediate, real-time needs of his custom-

- Networks Plus Technology Group (NPTG) (San Diego). Ranked 235. NPTG is a technology consulting company that does everything from reselling computer software and hardware to providing network security, storage and management services. The company markets its services aggressively, as its growth attests.
- RagingWire Enterprise Solutions (RES) (Sacramento). Ranked 216. RES offers a wide variety of information technology services and solutions that can be diversified and expanded to meet individual clients' needs, particularly regarding data storage, a need that is booming. RES specifically focuses on large, data-intensive Fortune 1000 companies.
- Red Hawk Industries (Greenwood Village, CO). Ranked 177. This company installs, maintains, repairs and replaces financial security equipment for retail shops and banks and other financial institutions all over the United States. Offering "one-stop shopping" a wide array of security equipment and services for a diversity of industries has led to Red Hawk Industry's success.
- Shutterfly (Redwood City). Ranked 170. Shutterfly customers can store, edit and share their digital pictures online and can order prints or personalized gifts from the website. The country's interest in taking digital pictures according to an industry group, 29.5 million cameras will be sold this year is surpassed only by the need to store those pictures; thus, Shutterfly's services are in great demand.
- Silicon Mountain Memory (Boulder, CO). Ranked 462. This manufacturer of computer memory components offers its products directly to information technology consumers. Even through the difficult times of the tech industry crash, Silicon Mountain Memory has increased

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# Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchamber.com/positionletters for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

# Chamber Supports Health Savings Account Legislation



The California Chamber of Commerce is **supporting** legislation to enable state taxpayers to take advantage of health savings accounts.

The bill, AB 2010 (Plescia; R-La Jolla), will conform California to recent changes in federal law permitting pretax contributions into a health savings account to pay for qualified medical expenses. AB 2010 has been set for hearing May 1 in the Assembly Revenue and Taxation Committee.

"Health savings accounts empower individuals to take charge of their health care purchasing decisions. These accounts help individuals accumulate tax-free savings to help pay for future medical expenses and retiree health expenses," said Chamber legislative advocate Marti Fisher.

Currently, California is one of only seven states that do not permit a state personal income tax deduction for contributions to a health savings account.

Federal law enacted in 2003, the Medicare Prescription Drug, Improvement and Modernization Act, permits taxpayers to deposit tax-free savings into health savings accounts to use for medical expenses. Either the account holder or the employer, or both, may contribute to the account up to 100 percent of the deductible amount of a high-deductible health insurance policy.

Account funds are portable and may be carried over from year to year during a participant's lifetime.

"Given the increasing cost of health care, the Chamber believes this type of product offers consumers another option and flexibility when making health care coverage choices," Fisher said.

Similar Chamber-supported legislation, **SB 1787 (Ackerman; R-Tustin)** is awaiting action in the Senate Revenue and Taxation Committee; a hearing date has not yet been set.

Staff Contact: Marti Fisher

# Winning a Battle, Losing the War in Workers' Comp?

Anti-employer forces are gearing up for a roll-back attack, threatening our hard-earned reductions in insurance premiums.



Champions for the successful workers' comp reforms have been put on notice as grumbling from applicant attorneys and labor union bosses mount. They want to inflate California's workers' comp costs, which will drive more jobs out of California. The roll-back lobbying machine is powering up, making it as critical as ever to stand vigilant over our gains.

It's no wonder why reform has caught the attention of those opposing business-friendly government. New rules requiring more rigourous evaluation have resulted in a 40% decline in the average disability classification. Because of this dramatic success, those who prospered over a decade of skyrocketing claims are trying to figure out a way back to the "good ol' days."

ChamberPAC's mission is to protect your interests by identifying and campaigning for business-friendly candidates running for local and state legislative seats. Our pro-jobs agenda is more urgent than ever as we gear up for this critical election year and ensure your voice is heard.

Workers' comp reform has had a stunning impact on business after a decade of soaring increases:

- Business insurance premiums have dropped an average of 46%
- Insurance companies have passed along 86% of their savings to employers

It's time to elect candidates who will protect our gains.

Amplifying the Voice of Business



Please contribute now. Call 916-444-6670 www.CalChamber.com/ChamberPAC



## Bill to Quantify Rule Burden on Small Business Heading for Hearing



California Chamber of Commerce-supported legislation that orders an indepth study of the effects of regulatory red tape on California small business, and makes recommendations on how to mitigate red-tape burdens in the future is set to be heard by the Assembly Jobs, Economic Development and the Economy Committee on March 28.

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.

#### **Big Burden on Job Generators**

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

Despite the economic importance of small firms, however, four major studies have shown that regulatory mandates and costs have a disproportionate impact on small businesses. Other research has shown that the disproportionate cost impact of regulations on small business is far higher at the state level.

#### **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 and protects the ability of small businesses to maintain and create jobs.

The Chamber is urging employers to write letters in **support** of AB 2330 to Assembly Jobs, Economic Development and the Economy by March 28.

**Staff Contact: Julianne Broyles** 

## Chamber Members Well Represented on Fastest-Growing Company List



From Page 5 revenues by keeping inventory low to undercut price competition.

• SkinMedica (Carlsbad).

Ranked 40. This specialty pharmaceutical firm develops and markets prescription and consumer skin-care products, primarily for dermatologists and spas. SkinMedica's growth stems in part from the huge uptick in consumer interest in skin-care products and from in-office marketing by dermatologists.

• STG International (Alexandria, VA). Ranked 80. This woman-owned firm, which grew more than 1,000 percent over three years, provides management and technical services to federal clients. These services include medical, human resources, management consulting, ad-

ministrative and facilities, and library and information management assistance.

• Strategic Business Systems (SBS) (Herndon, VA). Ranked 147. SBS provides information technology system design, installation, integration and operation services across the business spectrum, from corporate to non-profit to governmental needs. Its primary sales are in data storage, a much-coveted service by most companies for legal and regulatory compliance purposes.

• United Pacific Mortgage (Woodland Hills). Ranked 414. This company is a full-service, direct-to-customer mortgage banker and broker. Its 336 percent revenue growth over three years stems from aggressive marketing to real estate agents, an internal system to track customers, and campaigns to educate clients and employees.

• U.S. Labs (Irvine). Ranked 427. U.S. Labs performs cancer screening,

diagnosis, prognosis and genetic testing. The company serves more than 1,000 hospitals, surgery centers and physicians around the country. It returns results of prostate and breast cancer tests via the Internet in three days or less and processes about 15,000 tests per month.

• WageWorks (San Mateo). Ranked 24. WageWorks administers consumerdriven tax-advantaged spending accounts for health and dependent care for companies. This 338-employee firm attributes its success to the method and national scope of its product marketing.

■ Zantaz (Pleasanton). Ranked 59. Zantaz is a global provider of software to store, manage, archive and retrieve electronic documents and e-mail messages. It attributes its success to companies' newfound needs to quickly respond to industry regulations and regulatory requests for e-information.



## Unlock the mystery to leaves of absence

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