

ALERT

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CalChamber Wins Publication of Key Workers' Comp Ruling

Helpful Opinion Now Can Be Applied Broadly



At the request of the California Chamber of Commerce and others, the 1st District Court of Appeal has published a recent decision affecting use of the workers' compensation permanent

disability schedule.

Publication of the court's decision in *State Compensation Insurance Fund v. WCAB (Echeverria)*, issued January 5, means other cases can cite it on the important question of how to determine

whether the evidence in the case record supports the use of the permanent disability (PD) schedule adopted as part of the comprehensive reforms of 2004 or use of the pre-reform PD schedule.

Clarity for Future Cases

"The CalChamber applauds the court for publishing the opinion. Publication of the decision will provide clarity and guidance for other courts to follow in deciding similar cases," said Erika Frank, general counsel for the CalChamber. "The court's analysis will go far to prevent the misapplication of the new PD schedule."

In this case, the court ruled that,

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Senate Office Compares Health Care Proposals

Differing approaches to fixing California's ailing health care system have been presented by legislative leaders and Governor Arnold Schwarzenegger.

Earlier this month, the Senate Office of Research published a side-by-side comparison of the proposals from Senate President Pro Tem Don Perata (D-Oakland), Assembly Speaker Fabian Núñez (D-Los Angeles) and the Governor. That comparison appears on Pages 4-5 of this *Alert*.

The day the Governor released his proposal, California Chamber of Commerce President Allan Zaremberg commented that the CalChamber "shares Governor Schwarzenegger's goals of increased access to and affordability of health care coverage. Indeed, the CalChamber long has advocated policies to improve the

ability of employers and employees to purchase coverage by reducing costs — such as reducing mandates in benefit coverage, increasing the types of plans available for purchase, favorable state tax treatment for health savings accounts, reducing cost shifting by adequately funding government health care programs, and streamlining government regulation."

The CalChamber will conduct a comprehensive analysis of the reform proposal to examine its effects on the goals of increased affordability and access and

See Plan Comparison: Page 3

U.S. Court Overturns Maryland Mandated Health Benefit Law

The 4th U.S. Circuit Court of Appeals has invalidated Maryland's mandated health benefits law, which is similar to a California Chamber of Commerce-opposed bill from 2006.

The 4th Circuit's opinion affirmed a district court decision that the Maryland program violated the federal Employee Retirement Income Security Act (ERISA). The appellate court confirmed that employer health plans are governed by federal laws, not state or local laws.

Similar California Bill

The issue is almost identical to CalChamber-opposed **SB 1414 (Migden; D-San Francisco)** from 2006, which Governor Arnold Schwarzenegger vetoed.

SB 1414 would have imposed a tax on California employers with more than 10,000 employees, requiring those employers to spend the equivalent of 8 percent of their total payroll on health care or pay the equivalent amount to the state.

In vetoing the Maryland-style mandate bill, Governor Schwarzenegger stated, "without fundamental changes, costs will spiral higher, more businesses will be forced to drop health care coverage and fewer working families will find themselves with health care."

Court Finds Conflict

The court ruled that because Mary-

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Cal/OSHA Corner

Injury/Illness Log 300 Must Be Posted in February



Mel Davis
Cal/OSHA Consultant

Is my company required to post the Log 300 beginning February 1?

Beginning February 1, employers must post a summary of the total number of job-related injuries and illnesses that occurred last year. Employers are required to post only the Summary (Form

300A) — not the Log 300 — from February 1 to April 30, 2007.

What to Post

The summary must list the total number of job-related injuries and illnesses that occurred in 2006 and were logged on the Log 300 form. Employment information about the annual average number of employees and total hours worked during the calendar year also is required to assist in calculating incidence rates.

Companies with no recordable injuries or illnesses in 2006 must post the form with zeros on the total line. All establishment summaries must be certified by a company executive.

The form is to be displayed in a common area where notices to employees usually are posted. Employers must make a copy of the summary available to employees who move from worksite to worksite, such as construction workers, and employees who do not report to any fixed establishment on a regular basis.

Exempt Employers

Employers with 10 or fewer employees and companies that are classified in a low-hazard standard industry classification (SIC) normally are exempt from injury and illness recordkeeping and posting requirements. A free Log 300 wizard at www.calbizcentral.com can help a business determine whether it is subject

to record keeping requirements.

Exempt employers still may be selected by the U.S. Labor Department's Bureau of Labor Statistics to participate in an annual statistical survey. All employers covered by California's safety and health regulations need to comply with safety and health standards and must report verbally within eight hours to the nearest OSHA office all fatal accidents or the hospitalization of three or more employees.

PDF files of the OSHA Forms 300, 300A and 301 are available at www.hrcalifornia.com.

Employer Responsibility

Employers are responsible for providing a safe and healthful workplace for their employees. OSHA's role is to assure the safety and health of America's workers by setting and enforcing standards; providing training, outreach and education; establishing partnerships; and encouraging continual improvement in workplace safety and health. For more information on Log 300 filing and posting requirements, visit www.hrcalifornia.com.

The Labor Law Helpline is a service to California Chamber of Commerce 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 submit your question at www.hrcalifornia.com.

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Business Resources

Upcoming Issues for the 2007 Proxy Season. Wilcox Miller & Nelson. February 1, San Francisco. (916) 977-3700.

Transforming Fear to Action. Wilcox Miller & Nelson. February 13, Sacramento. (916) 977-3700.

International Trade

5th Annual California Debates. Northern California World Trade Center. February 26, Sacramento. (916) 319-4276.

4th Annual Global California Conference. Monterey Bay International Trade Association. March 16, Sacramento.

(831) 335-4780.

Sub-Saharan Africa Information and Communications Technology Conference. U.S. Trade and Development Agency. March 19-21, San Francisco. (866) 636-4729.

Labor Law

HR 101: Introduction to HR Administration. California Chamber of Commerce. January 31 - Santa Clara; February 6 - Sacramento.

Labor Law Update: HR 201. California Chamber of Commerce. January 30 - Emeryville; February 1 - Santa Clara; February 7 - Sacramento (sold out); February 13 - Online (2 hours). (800) 331-8877.



CalChamber-Led Group Outlines Plan to Help Speed Emission Reductions

A coalition co-chaired by the California Chamber of Commerce this week told state regulators that rules permitting businesses to plan could help speed the greenhouse gas emission reductions which are the goal of the state's new landmark law.

AB 32 (Núñez; D-Los Angeles) enacted last year, gives the California Air Resources Board (ARB) unfettered discretion to develop rules aimed at reducing greenhouse gas emissions in the state 20 percent by the year 2020.

At a January 22 ARB workshop on implementing AB 32, the coalition urged the ARB to adopt a certified early action program that provides greater regulatory certainty and encourages companies to continue investing in California.

Certainty Encourages Investment

"A certified early action program for AB 32 would not only provide the certainty businesses need to invest here in California, it could actually encourage companies to invest in energy efficiency and other projects earlier than required, which would speed up greenhouse gas emission reductions," said Dominic DiMare, CalChamber vice president of government relations.

The program would enable businesses to accurately and scientifically assess their current levels of greenhouse gas emissions and be recognized, rather than penalized, if they reduce emissions before the target date.

The coalition, known as the AB 32 Implementation Group, is led by the CalChamber and the California Manufacturers & Technology Association. The coalition represents trade groups and companies employing more than 1 million California workers.

The mission of the coalition is to ensure that the state achieves the greenhouse gas emission reductions required by AB 32 while maintaining the competitiveness of California businesses and protecting the interests of consumers and workers.

Principles

The coalition advocates that AB 32 be

AB 32 Implementation Group

implemented consistent with the following principles:

- **Provide Regulatory Certainty.** The administration and regulators should move swiftly to ensure that companies understand the impact of AB 32 on new investments in the state and receive recognition for energy-efficient projects that save energy and reduce greenhouse gas emissions. The regulatory uncertainty that currently exists under AB 32 threatens new investment in California.

- **Adopt Policies that Keep Jobs in California and Achieve Global Emission Reductions.** As AB 32 is implemented, agencies must carefully evaluate its impact on California companies to ensure that implementation does not force companies to leave California or expand elsewhere. This outcome would transfer the location of greenhouse emissions rather than actually reduce them.

- **Use Sound Scientific Methods of Review.** The AB 32 process should be established through a rigorous, scientifically valid manner subject to an open process. This is particularly important in establishing emissions inventories, baselines and allocations.

- **Impose only Cost-Effective and Technologically Feasible Regulations.** AB 32 requires that regulations to reduce emissions must be cost-effective and technologically feasible. The coalition strongly supports this directive because it helps ensure that AB 32 will not increase costs for consumers, threaten jobs or make California companies uncompetitive.

- **Promote Innovation and Market-Based Strategies.** Implementation of AB 32 should emphasize policy choices that promote technological innovation and the efficiency of market-based strategies and that include adequate regulatory certainty, reasonable timelines and permit streamlining.

- **Minimize and Fairly Allocate Compliance Costs.** AB 32 implementation should minimize compliance costs and

administrative fees to protect California jobs and consumers. Furthermore, the administrative costs of implementing AB 32 should be borne equitably across all sectors.

The AB 32 Implementation Group will continue its dialogue with all parties, including the ARB, the administration and the Legislature. It will work closely with stakeholders to develop solutions that protect California businesses and the economy.

Staff Contact: Amisha Patel

Plan Comparison

From Page 1

on the state's economic competitiveness.

The CalChamber has voiced concern over proposed methods of financing expanded coverage. For example, a proposed employer tax and mandated employee contribution are tied to payroll, and payroll growth in the state has risen at just half the rate of health care costs in California in recent years. This poses a risk the state could create another government program with insufficient funding, creating pressure to increase the new health care taxes or other taxes, or cut existing government programs.

Another concern is what the proposal will mean for those who purchase health care coverage today. Will the new tax on health care providers be passed on to employers and employees who currently purchase health care coverage, thereby reducing affordability and access?

The effect of a new 4 percent payroll tax on California employers also is a concern. How will small businesses that cannot provide health insurance today afford the new tax? How will it affect employment in the state and California's economic competitiveness?

The CalChamber is committed to improving access to health coverage through increased affordability and is preparing an alternative approach for policymakers to consider.

Staff Contact: Marti Fisher

Senate Office of Research Compares Key Elements of Health Care Proposals

| | Senate President Pro Tem Don Perata (D-Oakland) | Assembly Speaker Fabian Núñez (D-Los Angeles) | Governor Arnold Schwarzenegger (R) |
|---|---|--|---|
| Individuals Covered | <ul style="list-style-type: none"> ● Working Californians and dependents. ● All children, regardless of residency status, up to 300% federal poverty level (FPL). | <ul style="list-style-type: none"> ● Working Californians, including part-time and seasonal workers and dependents. ● All children, regardless of residency status, up to 300% FPL. Intent to cover single, unemployed adults not currently eligible for any public program by 2012. | All Californians. |
| Individual Mandate | <ul style="list-style-type: none"> ● Working Californians and dependents would be required to have a minimum health coverage policy. ● Minimum coverage benefit level to be determined by the Managed Risk Medical Insurance Board (MRMIB). ● Enforced through the tax code. | None. | <ul style="list-style-type: none"> ● Individual Mandate: All Californians, including children, would be required to have minimum health coverage. Minimum covered defined as a \$5,000 deductible plan with maximum out-of-pocket limits of \$7,500 per person and \$10,000 per family. ● Enforced through wage withholding and the tax code. |
| Employer Mandate; Employee Responsibility | Pay or Play: Employers would be required to spend a certain percentage of payroll (adjusted on a sliding scale) for employee health insurance OR pay an equivalent amount to a State Trust Fund along with an employee contribution. | <ul style="list-style-type: none"> ● Pay or Play: Employers would be required to provide employee health coverage OR pay a fee based on “fair share” percentage of payroll. ● Exemptions for: <ul style="list-style-type: none"> ✓ firms of less than two workers. ✓ firms with payroll of \$100,000 or less. ✓ certain newly established firms in business for less than three years. ● All employees who are offered coverage at work would be required to accept coverage for them and their dependents, provided their share of costs does not exceed a reasonable percentage of their income. Employees whose employers pay rather than offer coverage would pay a percentage of their income. | <ul style="list-style-type: none"> ● Pay or Play: Employers would be required to spend at least 4% of payroll for employee health insurance OR pay an equivalent amount. ● Exemption: Employers with fewer than 10 employees. |
| Medi-Cal Rate Increase | No. | No. | Yes. \$4 billion to increase rates closer to Medicare level. |
| Purchasing Pool | Yes — the “Connector.” | Yes — California Cooperative Health Insurance Purchasing Program (Cal-CHIPP). | Yes. |
| Individual Contribution to Obtain Coverage through Purchasing Pool | For participating employees, no additional cost for basic coverage. | No additional cost for basic coverage. | Sliding-scale individual contribution 3%-6% of gross income required to obtain coverage through purchasing pool. |

| | Senate President Pro Tem Don Perata (D-Oakland) | Assembly Speaker Fabian Núñez (D-Los Angeles) | Governor Arnold Schwarzenegger (R) |
|--|--|--|---|
| Tax Incentives | None. | All employers required to establish “Section 125 plan,” allowing employees to use pre-tax income for health expenses. | <ul style="list-style-type: none"> ● All employers required to establish “Section 125 plan,” allowing employees to use pre-tax sheltered income for health expenses. ● State tax conformity on Health Savings Accounts. |
| Medi-Cal/ Healthy Families Expansion/ Changes | (See note under Financing.) | Increase Medi-Cal and Healthy Families for all families up to 300% FPL; children would be covered regardless of residency status. Wraparound Medi-Cal and Healthy Families benefits for eligible persons with employers sponsored coverage. | <ul style="list-style-type: none"> ● Expand Healthy Families/Medi-Cal for all children, regardless of residency status, up to 300% FPL. ● Expand Medi-Cal to include all legal resident adults up to 100% FPL. ● Establish “bright-line” threshold between Medi-Cal and Healthy Families/new purchasing pool at 100% FPL. |
| Insurance Market Reforms | For health plans participating in the purchasing pool: <ul style="list-style-type: none"> ● guaranteed issue. ● community rating. | <ul style="list-style-type: none"> ● Prohibits exclusion of coverage for minor health conditions, as determined by MRMIB. ● Restructures the state’s high-risk pool and requires MRMIB to determine specific excludable pre-existing conditions for inclusion in the high-risk pool. ● Requires health insurers to offer uniform benefit designs in and outside of Cal-CHIPP. | Health plans: <ul style="list-style-type: none"> ● Guarantee coverage in the individual market. ● Rates based only on age and geographic area in the individual market. ● 85% of premiums must be spent on patient care. |
| Financing | <ul style="list-style-type: none"> ● Employer contributions. ● Employee contributions. ● Federal funds. Sources are: <ul style="list-style-type: none"> ✓ Increase Medicaid for working parents to 300% FPL. ✓ Increase State Children’s Health Insurance Program (SCHIP) for legal resident children to 300% FPL. | <ul style="list-style-type: none"> ● Employer contributions. ● Employee contributions. ● Federal funds (Medicaid, SCHIP). ● Surcharge on health insurance premiums (to finance high-risk pool). | <ul style="list-style-type: none"> ● Employer contributions (\$1 billion). ● Employee and individual contributions (unknown). ● Federal funds and redirection of safety net funds (\$5.5 billion). ● Redirect county funds, which includes realignment funds (\$2 billion). ● 2% fee on physician revenues and 4% fee on hospital revenues (\$3.5 billion). |
| Cost Containment | Within the purchasing pool: <ul style="list-style-type: none"> ● Managed competition through choice of health plans. ● Medi-Cal managed care buy-in. ● Cap on health plan administrative costs and profits. ● Plans must implement evidence-based practices that control cost growth, including preventive care, case management for chronic diseases, promotion of health information technology, standardized billing practices, reduction of medical errors, incentives for healthy lifestyles, appropriate patient cost-sharing, and rational use of new technology. | <ul style="list-style-type: none"> ● Disease management in state health coverage programs. ● Pay-for-performance for state-funded health coverage programs. ● Require plans and providers to participate in a personal health records system. ● Simplify benefit designs. ● Uniform benefit designs will include preventive services. ● Healthy lifestyles programs. ● Centralized technology assessment. | <ul style="list-style-type: none"> ● Reduce regulatory requirements on health plans. ● Reduce regulatory requirements in order to promote certain delivery models, such as retail clinics. ● Pilot to combine workers’ compensation with traditional health coverage. ● Health plans must offer “health actions” rewards and incentives with benefit packages. ● Promote health information technology and patient health records. ● Link future Medi-Cal provider and plan rate increases to performance. ● Make changes to seismic safety requirements for hospitals. ● Data reporting and quality monitoring. ● Health promotion and wellness (prevention of diabetes, medical errors, health care acquired infections, obesity and tobacco use). |
| Implementation Timeline | Not specified. | <ul style="list-style-type: none"> ● July 2008 — Insurance market reforms, kids coverage. ● January 2009 — Pay or play employer mandate. ● January 2012 — Coverage for remaining uninsured. | Not specified. |

No Operating Deficit in Budget Plan, Finance Director Emphasizes

State Finance Director Michael C. Genest presents an overview of the Governor's 2007-08 budget proposal to a California Chamber of Commerce Luncheon Forum audience on January 11, one day after the Governor released the plan. Genest emphasized to the more than 120 luncheon attendees that the Governor's budget plan does not raise taxes for the fourth year in a row, pays down the state's debt, fully funds the Proposition 98 guarantee to schools, expands Career Technical Education and invests in transportation.



CalChamber Wins Publication of Key Workers' Comp Ruling

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contrary to the findings of the Workers' Compensation Appeals Board, the record lacked substantial evidence supporting the application of the pre-reform PD schedule instead of the schedule adopted as part of the reform legislation's changes to Labor Code Section 4660 (d).

The opinion of the 1st District Court of Appeal reaffirms the requirement that in order for the pre-reform PD schedule to apply, a patient's medical record must contain "substantial evidence" demonstrating the existence of a permanent disability before January 1, 2005 (the date the new PD schedule was adopted). Absent such evidence, the new schedule adopted in 2004 must apply.

Interpretation Questions

Since the passage of CalChamber-supported SB 899 (Poochigian; R-Fresno) of 2004, lower level courts have struggled with interpreting and implementing the reforms. Inconsistent decisions by these lower level courts have caused litigation rates to skyrocket.

Uncertainty about how the legisla-

tion ultimately will be interpreted also is delaying resolution of many claims. The full benefit to all California citizens, both individuals and businesses, from this urgency legislation, has thus been delayed, the CalChamber argued in its letter asking the court to publish the *Echeverria* decision.

Publishing Criteria

Not every opinion of the Supreme Court and courts of appeal is published. The California Rules of Court set forth specific criteria that a case must meet to merit publication. Although unpublished opinions are binding on the parties to the lawsuit, such opinions cannot be cited or

treated as persuasive authority in subsequent cases.

CalChamber Argument

The CalChamber argued in its letter that the *Echeverria* case meets the criteria for publication. The court's observations make a significant contribution to the development of California's reformed workers' compensation laws, as the opinion discusses the legislative changes and emphasizes that "substantial evidence" is required to meet the statutory exceptions under Labor Code Section 4660, as amended by SB 899.

Staff Contact: Erika Frank

U.S. Court Overturns Maryland Health Mandate

From Page 1

land's Fair Share Health Care Fund Act in effect requires employers in Maryland covered by the act to restructure their employee health insurance plans, it conflicts with ERISA's goal of permitting uniform

nationwide administration of those plans. The court concluded that the Maryland act is pre-empted by ERISA.

**Staff Contacts: Marti Fisher
Erika Frank**

State Proposes Change in Rules Governing Employee Travel Expense Reimbursement

CalChamber Leading Coalition to Protect Employers

The California Chamber of Commerce is leading a coalition of businesses to protect employers from the unintended consequences of new state-proposed guidelines on how employers should determine and reimburse employees for job-incurred expenses.

Comment on Impact

The California Division of Labor Standards Enforcement (DLSE) has scheduled a public meeting on February 7 to accept comments on its proposal, which could leave the door open for an employee to be reimbursed at a rate higher than the Internal Revenue Service (IRS) mileage rate.

The proposed rules limit the employer's ability to provide reasonable reimbursement for employee-incurred expenses.

The CalChamber is encouraging employers to review the proposal and send comments on its impact to the CalChamber or to the DLSE.

Current law requires that employers reimburse employees for necessarily incurred costs that include reasonable expenses incurred by the employee in direct consequence of his/her duties.

DLSE is proposing regulations to explain the requirements for employers reimbursing employees for expenses connected with the use of a personal vehicle and travel for work, including lodging and meals.

The CalChamber and coalition members will be presenting testimony at the DLSE's February 7 public meeting in San Francisco, which is set to begin at 10 a.m. at the Hiram Johnson State Building Auditorium, 455 Golden Gate Avenue.

Testimony may be presented orally or in writing. DLSE requests, but does not require, that persons who present spoken comments at the hearing also submit a written copy.

Deadline

The deadline for submitting written comments is 5 p.m. on February 7. Comments may be submitted by mail, fax or e-mail. Submit comments to: Susie Smith, Regulations Coordinator, Division of Labor Standards Enforcement Department of Industrial Relations, 801 K Street, Suite 2100, Sacramento, CA 95814; E-mail: sesmith@dir.ca.gov; Fax (916) 322-1267.

To view the proposed regulations, visit the DLSE website at www.dir.ca.gov/dlse/2802Regs.htm.

Staff Contact: Marti Fisher

CalBizCentral Site Simplifies Search for Employer Resources

For employers still prepping their businesses for 2007 or those simply in need of key human resource products, the CalBizCentral website is a one-stop shop for affordable resources to make California businesses run better.

Customers who haven't visited www.calbizcentral.com lately should take note of several features on the site that are making it easier for businesses to choose the right products for their workplace needs.

For example, employers can digitally preview many items before purchasing the products necessary to meet state requirements and promote a safe workplace. The site offers previews of training videos and allows users to look inside the pages of pamphlets and books, including

the two-volume *Labor Law Digest*.

Visitors also can flip through the CalBizCentral catalog to help determine what their business needs.

"Our mission is to help California businesses do business," said Jan Bell, senior vice president of sales, marketing and product development for the California Chamber of Commerce.

"The preview feature on CalBizCentral is just another part of our ongoing effort to make it easier for employers to figure out what they must do to comply with the law here in California."

Presented by the CalChamber, CalBizCentral is the source for California human resource products, available to order at the site or by calling (800) 331-8877. Products are available for purchase by any business;



CalBizCentral allows visitors to preview products, such as the video on managing and preventing back pain, illustrated here.

CalChamber preferred and executive members receive a 20 percent discount.

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Monday, May 21, 2007



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To register, visit www.calbizcentral.com/HR101 or www.calbizcentral.com/HR201 or call (800) 331-8877.

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