

ALERT

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CalChamber Targets Excessive Litigation Costs



Senator Tom Harman

The California Chamber of Commerce is **sponsoring** legislation to improve California's rock-bottom legal climate by preventing out-of-control, extreme punitive damages awards.

CalChamber-sponsored SB

423 (Harman; R-Huntington Beach) caps punitive damages at three times the award for compensatory (actual) damages.

"California's punitive damages system

is unpredictable and unstable because the current system does not have adequate safeguards against excessive award amounts," said Kyla Christoffersen, CalChamber policy advocate. "Adopting a cap will help to ensure that awards are reasonable."

Current System Harmful

California's unfortunate reputation as one of the least fair and most burdensome civil liability climates has a detrimental impact on the state's ability to retain and attract investments and jobs. The threat of excessive punitive damages awards remains one of the strongest concerns of businesses across the nation, according to

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Newsweek Columnist to Speak at Business Legislative Summit



Howard Fineman

Howard Fineman, senior Washington correspondent and columnist for *Newsweek*, will be a special guest speaker at this year's California Business Legislative Summit on May 21.

This is the 20th anniversary for

the day-long California Chamber of Commerce-sponsored event in Sacramento.

Close to 1,000 businesspeople from throughout the state are expected at the Summit, which provides business and local chamber of commerce leaders a forum to meet with peers and state policy experts and to focus on priority legislative issues facing California businesses.

Howard Fineman

Fineman serves as *Newsweek's* chief political correspondent, senior editor and deputy Washington bureau chief. An award-winning writer and commentator, he also is a news analyst for NBC and contributes reports to MSNBC and CNBC.

Fineman's work has appeared in the *New York Times*, the *Washington Post* and the *New Republic*, and he has appeared on

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CalChamber Backs Trade Mission to Canada

The California Chamber of Commerce is urging its members to express their interest in joining Governor Arnold Schwarzenegger on a trade mission to Canada this spring.

"Canada is now the second largest customer for California's exports, with a total dollar value of \$14.2 billion in 2006. Two-way trade with Canada supports an

estimated 832,000 jobs in California," said Susanne Stirling, CalChamber vice president of international affairs.

"With a population and economy larger than Canada, California is unquestionably a major market for Canadian manufactured goods, energy, forest and agri-food products and a wide range of

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Labor Law Corner

Obeying California Paycheck Laws Prevents Legal Trouble for Employers



Jessica Hawthorne
Employment Law
Counsel

Our payroll is run out of our main office, which is out of state. We include the name and address of the bank our main office uses on the paychecks. Is this in compliance with California law? Also, can we require our employees to use direct deposit?

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No. Using an out-of-state bank violates California Labor Code Section 212(a)(1), which prohibits payment of wages by check unless the check is "negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument."

In other words, employees must be able to cash their checks at a local bank for no fee.

Court Guidance

A class action lawsuit was filed against Dollar Tree Stores, which issued its payroll with checks from an out-of-state bank, causing employees to incur check-cashing fees and experience extended waiting periods for deposits. Dollar Tree paid employees with checks drawn on a bank with no California branches.

In rejecting a request to dismiss the case, the court provided examples of how employers in this situation can comply with the Labor Code:

- offer to cash an employee's checks at one of its business locations;
- retain a check cashing service; or
- make arrangements with California banks to pay any check cashing fees that otherwise would be charged to the employee.

Employees whose employers violate this law may recover specific check-cashing costs going back four years, as well as Labor Code penalties pursuant to the state's Private Attorney General Act.

Other Cautions

Some employers try to require their employees to use direct deposit for ease of administration and/or to avoid the requirement of having a local bank. Labor Code Section 213(d), however, prohibits direct deposit unless an employee voluntarily authorizes it.

Further, an employee's authorization of direct deposit does not supersede the requirement stated in Section 212(a)(1).

It is important to note that California laws regarding delivery of a final paycheck apply regardless of where the employer's payroll is run.

More Information

Learn more about this topic with the following resources at www.hrcalifornia.com:

- form of payment (covered in "Wages, Salaries and Other Pay" in the Compensation Library);
- time of payment (covered in the same section); and
- direct deposit authorization form.

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.

Seminars/Trade Shows

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

Business Resources

Nonprofit & Faith-Based Tax Seminar.
California State Board of Equalization.
April 13, Merced. (916) 341-7389.

International Trade

Doing Business With China. Inland International Trade Association, Inc. and Sacramento Center for International Trade Development.
March 29, Sacramento. (916) 563-3200.

International Water Technology Conference. International Center for Water Technology. April 2-4, Fresno. (559) 278-2066.

9th Annual Trade Policy Forum 2007. California Council for International Trade. April 19-20. Silicon Valley. (415) 788-4127.

CalChamber Calendar

California Business Legislative Summit:
May 21-22, Sacramento



Business Leaders Say Time of Essence to Improve High School Graduates' Skills



"Extremely challenged and essential to the future and economic viability of businesses in California, let alone the broader

attractiveness of the state as a place to live and work."

That's how one senior California business executive described the state of the K-12 education system. His remark succinctly summed up the attitudes of California business owners generally, as reflected in a first-of-its-kind survey sponsored by the California Foundation for Commerce and Education, with the generous support of the William and Flora Hewlett Foundation and the Bill and Melinda Gates Foundation.

Business leaders are deeply concerned — and deeply dissatisfied — about the condition of public schools, especially high schools.

California business leaders place education at the very top of public policy concerns, alongside health care. At the same time, executives give K-12 schools a "D" grade for their quality of work.

The representative sample of business executives responding to the survey believe that schools need more funding, but believe even more strongly that reforms should be adopted to meaningfully overhaul how schools are run and pupils educated.

More than '3 Rs'

And what are the reforms business leaders insist will make a difference? Personal responsibility, work ethic and communication skills.

These reforms aren't exactly the "3 Rs," and they don't show up on the must-do lists of Sacramento insiders or even the voters. But business executives concerned about their future workforce are deeply worried about these job readiness skills.

Don't think, however, that executives are trying to burden the schools with yet another mandate. The skills executives are demanding are intimately entwined

Guest Commentary By Loren Kaye

with the pursuit of academic excellence.

Indeed, what is a better exemplar of personal responsibility than arriving at class on time, with the mental and physical condition to participate in the day's lesson? Likewise, a good work ethic can be instilled by insisting that homework

that "providing skills to students so they can be productive workers in California's economy" should be the main purpose of a high school education. Focusing on the basics ranked next in priority, followed by college preparation and citizenship.

How to Achieve Goals

How can we achieve these academic and workforce goals?

Business leaders strongly endorsed a tougher state accountability and performance measurement system, asserting that this is an area where schools can learn from the private sector. Clearly tracking and evaluating teacher performance in improving student performance is a key reform that can help schools focus on academic and discipline goals, according to business leaders — who in addition want to hold the entire school community responsible for meeting those goals.

Business leaders also strongly endorsed a "tough love" policy for school teachers and principals. Reflecting on their own experiences in business, executives called for treating these employees as true professionals: increasing salaries for teachers who improve student performance, and making it easier to fire underperforming or incompetent teachers; investing more in teacher training and mentoring; and applying tougher standards and penalties for school principals.

Above all, business leaders are sending a message that time is of the essence. In the words of one senior executive of a large California company: "I always say, forget about Osama Bin Laden — if you want to talk about something that really threatens our society, it's the quality of education."

Loren Kaye is president of the California Foundation for Commerce and Education, a non-partisan, non-profit corporation that functions as a "think tank" for the business community in California and is affiliated with the California Chamber of Commerce.

Forget about Osama Bin Laden — if you want to talk about something that really threatens our society, it's the quality of education.

be completed on time and assignments treated with respect and diligence.

Job readiness skills are in fact the same skills that are necessary for scholastic success — they simply aren't being valued in the classroom or on the campus, according to business leaders.

This is not to say that executives downplayed the importance of the academic disciplines. Mastery of reading was placed on a par with the job readiness skills, with writing and mathematics also highly rated by executives, but not nearly so critical as the job readiness skills.

In another departure from conventional wisdom, business leaders declared

CalChamber Targets Excessive Litigation Costs



SUPPORT

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the U.S. Chamber of Commerce
2006 State Liability Systems Ranking Study.

California ranked seven places from the bottom, 44th out of 50, in creating a fair and reasonable litigation environment in the U.S. Chamber's study, based on views of lawyers who represent business. With respect to punitive damages systems specifically, California ranked 41st out of 50.

Another 2006 study by non-partisan think tank Pacific Research Institute, *U.S. Tort Liability Index*, ranked California 35th out of 50, with 50 being worst, using 39 objective factors to measure monetary tort losses and threats among state legal systems.

The study cites research establishing that adoption of one additional liability-reducing reform results in an increase

in worker productivity ranging from 3.1 percent in retail trade, to 7.6 percent in repair services, to 8.9 percent in recreation trades. Moreover, economists have determined that there is a direct relationship between a state's legal climate ranking and its gross product.

The California Supreme Court has indicated that a punitive damages award should bear a reasonable relationship to the award of compensatory damages or the injury sustained (*Neal v. Farmers Insurance Exchange*).

In determining whether exemplary damages are excessive as a matter of law, the reviewing court may look to three factors:

- the reprehensibility of the defendant's conduct;
- the relationship between the punitive damages award and the compensatory damages award; and
- the defendant's wealth.

The CalChamber believes that the State of California should take a proactive step to improve California's legal

climate by recognizing as a matter of law that a punitive damages award that exceeds three times the compensatory damages does not bear a reasonable relationship and is excessive.

Action Needed

SB 423 awaits action in the Senate Judiciary Committee, chaired by Senator Ellen Corbett (D-San Leandro).

Harman is vice chair of the committee and authored CalChamber-sponsored punitive damages reform legislation in 2006. AB 1863 would have protected businesses from excessive punitive damages awards by giving judges, rather than juries, the responsibility of determining the amount of the award.

The CalChamber is encouraging businesses to contact their senators and committee members to urge **support** for **SB 423**.

A sample letter is available at www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

Newsweek Columnist to Speak at Business Legislative Summit

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many public affairs programs, including *Nightline*, *Larry King Live* and *Fox News Sunday*. His "Living Politics" column appears weekly on the MSNBC and *Newsweek* websites.

Summit Agenda

The Summit agenda will feature a morning introduction from CalChamber President Allan Zaremberg, as well as discussions with noted experts on key policy issues and time to visit with state legislators.

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

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 Award; and local chambers that have sup-

ported the CalChamber's candidate political action committee, ChamberPAC.

Sacramento Host Events

Summit attendees will have an opportunity to end their day by mingling with their peers and other leaders from business, agriculture, the administration, education and the military, plus state legislators at the Sacramento Host Reception the evening of May 21.

The reception welcomes out-of-town guests to the invitation-only 81st Annual Sacramento Host Breakfast on May 22.

Summit attendees also have the opportunity to attend this exclusive event the morning following the Summit. Featured speakers at the breakfast will be Governor Arnold Schwarzenegger and CalChamber Board Chair Russell Gould.

Sacramento business leaders host the annual reception and breakfast to spotlight California's role in national and international commerce. The goal of the Host Breakfast 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 at a common table.

Registration

The two-day registration package, including the full-day Summit with lunch, the Host Reception and Host Breakfast, is \$200. Other registration options are available. Registration fee increases after April 13. The deadline to register is May 11.

For more information or to register, visit www.calchamber.com/legsummit07.

Staff Contact: Alicia Smith

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business in California.

CalChamber in Court

CalChamber Acts in Meal/Rest Period Case to Protect Employers from Lawsuits

The California Chamber of Commerce and other employer groups recently presented oral arguments before the California Supreme Court to protect employers from lengthy litigation over meal/rest period violations.

The court is examining *Murphy v. Kenneth Cole Productions, Inc.*, the leading case on the issue of whether the statutory payment required under Labor Code Section 226.7 for failure to provide a rest or meal break is a penalty or a wage.

Impact on Litigation

The court's decision is expected to affect the volume of litigation involving

claims of meal/rest period violations because it in effect will determine how long an aggrieved employee has to file a claim after the alleged violation of the requirement.

CalChamber arguments, presented March 7 by attorney Steve Drapkin, cited 100 years of California case law as clearly pointing to the payment require-

ment being a penalty and not a wage. In addition, legislative discussions leading to the adoption of the payment requirement identified it as a penalty, as did later proposals to amend that section of the law.

How Long to File

The court's ruling will determine

whether the limitation period for failing to provide a meal and/or rest period is one year (if a penalty) or three (if a wage).

The impact of this case is enormous due to the number of lawsuits pending in California seeking payment under Section 226.7.

Class action claims for meal and rest period violations also have been on the rise because of the potential for substantial monetary payouts arising from per-day, per-employee penalties.

The Supreme Court has 90 days from the day arguments were presented to issue an opinion in the case.

Drapkin said the case gives the justices a chance to resolve "the most prevalent undecided issue" affecting these types of lawsuits.

Staff Contact: Erika Frank



CalChamber Supports California Trade Mission to Canada

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services," Stirling said.

Canada-California Connection

Canada-California trade has grown steadily since the 1970s, accelerating with enactment of the Canada-U.S. Free Trade Agreement in 1989, and the North American Free Trade Agreement (NAFTA) in 1994.

Underscoring the timeliness of the trade mission, the Bay Area Economic Forum (BAEF) this week released a comprehensive study on the economic importance of the Canada-California partnership. The study highlights opportunities for strengthening and expanding Canada-California collaboration in science and technology, agriculture, tourism and energy.

According to the BAEF study, Canada is one of California's largest tourism sources, sending more visitors to California than any other country except Mexico. Just over 1 million Canadians traveled to and through California in 2005,

contributing \$710 million to the state economy in travel-related spending. Canadian tourism generates \$27 million in California state tax revenue and supports more than 7,000 California jobs.

For the full study, visit the BAEF website at www.bayeconfor.org.

Register Interest in Mission

The CalChamber is encouraging its members to express their interest in joining the trade delegation.

Governor Schwarzenegger will lead the trade mission to Canada during the

final week of May. The California Business, Transportation and Housing Agency is recruiting a trade delegation to accompany the mission. California businesses interested in participating must fill out the application of interest and plan to travel May 28-31.

Please note that space is limited.

Filling out the application of interest is required, but does not guarantee participation. To fill out an application of interest, visit the Business, Transportation and Housing website at www.bth.ca.gov.

Staff Contact: Susanne Stirling

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Legislative Outlook

An update on the status of key legislation affecting businesses. Visit www.calchambervotes.com for more information, easy-to-edit sample letters on hot topics 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.

CalChamber Supports Freeze Relief Legislation



SUPPORT

The California Chamber of Commerce is **supporting** several bills designed to provide relief for farmers affected by the freeze that hit the state in January.

AB 297 (Maze; R-Visalia) and **SB 148 (Hollingsworth; R-Murrieta)** provide a limited property tax exemption for fruit- and nut-bearing trees that were severely damaged by the January freeze.

SB 114 (Flores; D-Shafter) provides tax relief to help farm owners survive severe crop losses as a result of the January freeze.

California's agriculture industry is a crucial and significant contributor to the state's economy, generating about \$32 billion in direct farm sales in 2004, according to the California Department of Food and Agriculture.

January's freeze is reported to have caused \$1.32 billion in crop losses. Fruit and nut tree crops bore 70 percent of

these losses — around \$947.4 million.

SB 148, SB 114 and AB 297 will provide needed relief to help farmers and their employees survive the losses and recover from crop damage.

Action Needed

AB 297 will be heard by the Assembly Revenue and Taxation Committee on March 26.

SB 114 and SB 148 passed the Senate Revenue and Taxation and Senate Appropriations committees with no opposition. Both will be considered next by the full Senate.

Contact your representatives in the Assembly and Senate and urge them to **support** these bills.

Find sample letters under "Bill Tracking" at www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

CalChamber Questions Benefit of Health Coverage List



OPPOSE

The California Chamber of Commerce is encouraging employers and legislators to **oppose** a bill creating a website list of employers having employees who receive public assistance health care.

CalChamber-**opposed AB 343 (Solorio; D-Santa Ana)** creates a public access website to list employers of 25 or more whose employees (or the employee's dependents) receive public assistance health care under Medi-Cal, the California Children's Services Program and the Healthy Families Program.

The CalChamber is pointing out that the purpose of this public posting is unclear and could be misleading. The CalChamber is concerned that the data does not consider or reflect employees who have more than one employer. For example, if an individual has more than one job, on which employer's report would he/she appear?

In addition, the bill does not differentiate between part-time, seasonal or recently hired employees. It does

not consider that some employers require employees to be employed for a specific amount of time before health care benefits are offered, and some employees may decline to take advantage of coverage due to the out-of-pocket employee share of the cost.

The CalChamber believes naming employers with employees who are enrolled in public health care programs in reports to the Legislature and on agency websites is a seriously misguided approach to expanding access to health care and expanding employer-based health care coverage.

Action Needed

AB 343 is scheduled to be heard in the Assembly Health Committee on March 27. Contact your Assembly representatives and members of Assembly Health and ask them to **oppose AB 343**.

For an easy-to-edit sample letter, visit www.calchambervotes.com.

Staff Contact: Marti Fisher

CalChamber Fights Bills Boosting Workers' Comp Costs



OPPOSE

Legislation undermining the workers' compensation reforms that have saved employers billions of dollars is under consideration in both houses of the Legislature.

The California Chamber of Commerce is **opposing** the bills.

Utilization Review

● **Medical Treatment Utilization Review. AB 644 (Dymally; D-Compton)** increases workers' compensation costs by limiting the application of objective medical treatment guidelines during the utilization review process.

By in effect restricting the use of utilization review, AB 644 will weaken the application of nationally recognized, peer-reviewed and evidence-based medical treatment guidelines. This would lead California back to a system that provides ineffective treatment to injured workers at exorbitant cost to employers.

● **Medical Treatment Utilization Schedule. AB 1073 (Nava; D-Santa Barbara)** increases workers' compensation costs by altering the caps on physical therapy, occupational therapy and chiropractic care.

The cap on physical therapy, occupational therapy and chiropractic care was the result of significant abuse of these

modalities before the recent reforms. The abuse contributed significantly to the explosion in costs that led to adoption of the CalChamber-supported reform legislation in 2004.

AB 1073 requires that all utilization review decisions to modify, delay or deny treatment requests be made by physicians licensed in California. The Medical Treatment Utilization Schedule, adopted by the Division of Workers' Compensation and used by utilization review doctors in decision making, consists of nationally recognized, peer-reviewed, and evidence-based guidelines.

There is no reason to assume that a physician licensed in California would have any better insight into the application of these guidelines than another doctor in a different state. Moreover, the regulations governing the application of utilization review already sufficiently ensure that physicians are qualified to be making medical decisions.

Job Displacement Vouchers

● **Supplemental Job Displacement Vouchers. AB 1636 (Mendoza; D-Artesia)** increases workers' compensation costs by requiring employers to provide some injured workers with supplemental job displacement vouchers (SJDV) before being able to verify that the injured worker is eligible for the benefit.

The bill does not, however, provide any remedy to an employer that provides a benefit for which the injured worker is

not ultimately eligible, thus financially penalizing the employer for complying with the law.

● **Workers' Compensation. SB 942 (Migden; D-San Francisco)** increases workers' compensation costs by creating new, unnecessary requirements for employers when bringing injured employees back to work.

SB 942 shifts to the employer the burden of proving that the employer hasn't discriminated against an employee who filed a workers' compensation claim if the employee isn't returned to work with full pay and benefits within one day of being released to full duty.

In addition, SB 942 requires that a SJDV be awarded within 10 days of the date an employee's injury is determined to be "permanent and stationary."

Action Needed

The Assembly proposals will be considered by the Assembly Insurance Committee. AB 644 is scheduled for hearing on April 11. Contact Assembly Insurance members and urge them to **oppose AB 644, AB 1073 and AB 1636**.

SB 942 will be considered by the Senate Labor and Industrial Relations Committee and the Senate Judiciary Committee. Contact the Senate committee members and urge them to **oppose SB 942**.

Sample letters are available at www.calchambervotes.com.

Staff Contact: Jason Schmelzer

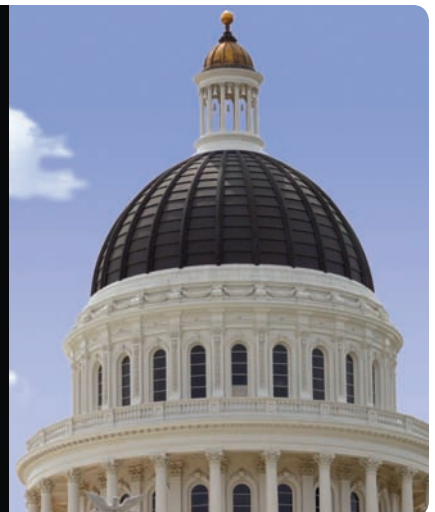


California Business Legislative Summit Monday, May 21, 2007

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