

ALERT

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CalChamber Stresses Need for Lawsuit Reform in State

A new survey ranking California's legal climate near the bottom compared to other states underscores the need for reform, California Chamber of Commerce President Allan Zaremborg emphasized at a press conference this week.

The April 25 press conference highlighted a U.S. Chamber-commissioned study that ranks California 45th, one spot lower than a year ago.

The survey, *Lawsuit Climate 2007: Rating the States*, is an annual assessment of state liability systems conducted by Harris Interactive, a leading non-partisan polling firm.

Reforms Needed

"It's clear from the number of 'get rich

quick' nuisance suits that continue to get filed in California — and from this survey — that we need more lawsuit reform in California," Zaremborg said. "Our courts should be reserved for legitimately injured parties to seek justice and redress, quickly and fairly."

The CalChamber is **sponsoring SB 423 (Harman; R-Huntington Beach)**, which helps improve California's rock-bottom legal climate by preventing out-of-control, extreme punitive damages awards with a cap that limits them to an amount no greater than three times the compensatory (actual) damages award.

The CalChamber also is **supporting AB 1505 (Parra; D-Hanford)**, which
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Summit-Linked Event to Feature Governor, CalChamber Chair



Governor Arnold Schwarzenegger



Russell Gould

Governor Arnold Schwarzenegger and California Chamber Chair Russell Gould will be the featured speakers at this year's Sacramento Host Breakfast following the California Business Legislative Summit.

Summit attendees have the opportunity to attend the invitation-only Sacramento Host Breakfast on May 22, the morning following the May 21 summit.

The summit, sponsored by the CalChamber, 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

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California Chamber President Allan Zaremborg emphasizes the need for reforms to improve California's legal climate at a State Capitol press conference. From left are Tom Donohue, U.S. Chamber; Assemblywoman Nicole Parra, author of CalChamber-supported class action lawsuit reform legislation; John Sullivan, Civil Justice Association of California; Lisa Rickard of the U.S. Chamber Institute for Legal Reform; and Kyla Christoffersen, CalChamber policy advocate.

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Labor Law Corner

Court Decision Increases Importance of Properly Classifying Employees



Gary Hermann
Labor Law Consultant

Please explain the recent Supreme Court decision regarding payment for missed meal and rest periods and the decision's impact on payment of premium pay.

Before the recent decision, the Labor Commissioner and the California courts always had allowed three years for the re-

covery of unpaid overtime. In addition, if the employer fails to pay overtime owed at termination, the employee is entitled to waiting time penalties.

In contrast, when an employer fails to pay a split shift or reporting time pay, traditionally the Labor Commissioner has allowed only a one-year statute of limitations.

Wage Orders

Industrial Welfare Commission Wage Orders, which apply only to non-exempt employees, have sections dealing with penalty pay, including the following:

- Section 4 provides for an additional hour's pay at the minimum wage on a day the employee works a split shift.

- Section 5 requires that employees be paid for one-half of their usual or scheduled day's work on any day they are required to report for work and do not work or are furnished less than half of their usual or scheduled day's work, otherwise known as reporting time pay.

- Sections 11 and 12 and Labor Code Section 226.7 require employers to give non-exempt employees a certain number of rest and meal breaks, depending on the number of hours worked each day. For each day an employer fails to provide an employee with a required meal or rest period, the law requires that the employee be paid one additional hour at the employee's regular rate.

A 2006 decision of the Labor Commissioner determined that the meal break pay was a "penalty" rather than a "wage." This decision was important because employees could collect back *penalties* for only one year, whereas claims for unpaid *wages* can go back three years.

Court Decision

On April 16, the California Supreme Court disagreed with the Labor Commissioner, finding in *Murphy v. Kenneth Cole Productions, Inc.* that the missed meal or rest break pay is actually wages — not a penalty — with a three-year statute of limitations. The court stated that meal and rest break pay, like overtime, split shift and reporting time, amounted to premium pay.

The court's decision invalidates the Labor Commissioner's earlier opinion.

In *Murphy v. Kenneth Cole*, the employer wrongly classified the employee as an exempt manager because the majority of the employee's work time involved non-exempt duties such as stocking shelves and cleaning. As an exempt employee, he was not provided meal or rest breaks.

The court found that the employee was in fact a non-exempt employee and was entitled to meal and rest breaks or the additional hour of pay for the employer's failure to provide them going back three years.

Undecided Issue

One important issue that the court did not address is what would happen if an employee quits or is terminated without having been paid for the missed meal and/or rest breaks.

Is the employee able to claim waiting time penalties, which can require the employer to pay up to 30 days of wages as a penalty for not having paid all wages due at the time of termination?

Since the court reasoned that meal and rest pay is considered wages, a former employee who has not received meal and rest pay, as well as split shift differential and reporting time pay, may well be able to claim waiting time penalties.

Proper Classification Key

This decision makes it more important than ever to properly classify employees as exempt or non-exempt and ensure all non-exempt employees take all required meal and rest breaks.

Failure to provide those meal and rest breaks can result in liability for three years of payments for the one hour of premium pay for each missed meal or rest period, plus waiting time penalties of up to 30 days of pay.

An Exempt/Non-Exempt Wizard is available at 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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Health Care Tax on Small Employers Passes Assembly, Senate Policy Committees

Fatal Flaw Bases Expensive New Program on Inadequate, Illegal Revenue Stream



OPPOSE

Legislation by Assembly and Senate Democratic leaders that includes a tax on small employers who can't afford to provide health care coverage advanced in the legislative process this week.

On April 24, the Assembly Health Committee approved California Chamber of Commerce-**opposed AB 8 (Núñez; D- Los Angeles)** on a party-line vote of 12-5, with Democrats in support and Republicans opposing.

On April 25, the Senate Health Committee passed CalChamber-**opposed SB 48 (Perata; D-Oakland)** by a vote of 7-4, with Democrats in support and Republicans opposing.

AB 8 requires employers to provide health care coverage or pay a new, still-to-be-specified payroll tax.

SB 48 requires employers to spend a yet-to-be-designated amount on health care for employees and their dependents or pay a tax to the state. It also requires some individuals to have coverage.

Affordability, Tax Concerns

CalChamber Senior Vice President Jeanne Cain outlined several key concerns to both committees in explaining the CalChamber's opposition to the bills:

- The main reason some employers don't provide health care coverage now is that they can't afford it. Mandating such coverage doesn't make it any more affordable. "If they can't afford the health care of today, I don't believe they can afford the health care tax of tomorrow," Cain commented.

- The revenue stream identified by both bills is a tax that should require approval by a two-thirds vote of the Legislature, although neither bill is so designated.

- The cost of individual coverage as outlined by the bills could amount to at least a 20 percent payroll tax for a \$10 per hour employee, with the potential for future increases given that health

care inflation is rising at twice the rate of payrolls.

- Other state programs will be jeopardized if the proposed revenues for the new health care program are struck down by a court challenge or fall short of rising costs.

"The fatal flaw in these health care reform plans is that their revenue stream is inadequate and illegal," said CalChamber President Allan Zaremberg in a statement released after the bills passed. "Since the state cannot afford to pay for existing programs, it would be irresponsible to create a huge new unfunded program, further increasing pressure on the General Fund and placing existing programs at greater risk."

Key Votes

The Assembly Health vote on AB 8 was:

Ayes: Dymally (D-Compton), Bass (D-Los Angeles), Berg (D-Eureka), De La Torre (D-South Gate), De León (D-Los Angeles), Hancock (D-Berkeley), Hayashi (D-Castro Valley), Hernandez (D-La Puente), Jones (D-Sacramento), Lieber (D-Mountain View), Ma (D-San Francisco), Salas (D-Chula Vista).

Noes: **Nakanishi (R-Lodi), Emmer-son (R-Redlands), Gaines (R-Rose-**

ville), Huff (R-Diamond Bar), Strickland (R-Moorpark).

Senate Health approved SB 48 by a vote of 7-4:

Ayes: Kuehl (D-Santa Monica); Alquist (D-Santa Clara); Cedillo (D-Los Angeles); Negrete McLeod (D-Chino); Ridley-Thomas (D-Los Angeles); Steinberg (D-Sacramento); Yee (D-San Francisco).

Noes: **Aanestad (R-Grass Valley); Cox (R-Fair Oaks), Maldonado (R-Santa Maria), Wyland (R-Del Mar).**

Staff Contact: Marti Fisher

Seminars/Trade Shows

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

Business Resources

Small Business Fair. California State Board of Equalization. May 4, Redding. (916) 341-7389.

Executive Search Minefield. Wilcox Miller & Nelson. May 8, Sacramento. (916) 977-3700.

Free Tax Seminar for Nonprofit Organizations. California State Board of Equalization. May 18, Fresno. (916) 341-7389.

Labor Law

Lawful Terminations 201 Live Web Seminar. CalChamber. May 10. (800) 331-8877.

CalChamber Calendar

California Business Legislative Summit:
May 21-22, Sacramento

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Summit-Linked Event to Feature Governor, CalChamber Chair

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facing California business.

The summit'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.

Sacramento Host Breakfast

Sacramento business leaders host the annual Sacramento Host Breakfast, marking its 81st anniversary this year, 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.

Chairing the Sacramento Host Committee this year is F. Frederick Brown, president of Brown, Stevens, Elmore & Sparre. The vice chairman of the committee is Joseph S. Genshlea, partner with Weintraub Genshlea Chediak. Twenty-four Sacramento business leaders comprise the committee.

Legislative Summit

Featured topics at this year's summit include:

- Health Care Reform: Economic, Legal and Political Realities; and

- Term Limits, Redistricting, Political Reform: All or Nothing?

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 CalChamber's candidate political action committee, ChamberPAC.

May 11 Deadline

The deadline to register for the summit is May 11.

For more information or to register, visit www.calchamber.com/legsummit07.
Staff Contact: Alicia Smith

CalChamber Stresses Need for Lawsuit Reform in State

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improves California's legal climate by bringing balance to class action lawsuit standards so that class actions are used for meritorious rather than frivolous, profit-motivated claims.

"The problem arises when California's standards differ dramatically from other states and the federal level," Zaremborg said. "These reforms help bring certainty back into our legal system and California back into the main stream so that businesses can feel more comfortable investing for the long term in our state."

Class Action Lawsuit Abuse

"California's low ranking is not surprising, given the fact that California courts are willing to certify class action lawsuits most other jurisdictions would toss out, and that California juries are increasingly likely to award disproportionately large judgments in civil cases," said Tom Donohue, president and chief executive officer of the U.S. Chamber.

A recent actuarial study estimated the annual cost of the tort system in the United States to be \$261 billion, or \$880 per citizen. Following those estimates, the price tag of the lawsuit system for the entire population of California is almost \$32 billion.

Punitive Damages

Punitive damages ranked as the top concern in the lawsuit climate survey, both this year and last year.

California ranked 48th in punitive damages and 46th for its treatment of class action suits and mass consolidation suits.

It also ranked in the bottom five for timeliness of summary judgment or dismissal; discovery; and juries' predictability.

The survey included a nationally representative sample of 1,599 in-house general counsel or other senior litigators at companies with annual revenues of at least \$100 million.



Senator Tom Harman

Action Needed

SB 423 awaits action in the Senate Judiciary Committee. Contact your senator and committee members and urge them to **support SB 423**.

AB 1505 will be heard in the Assembly Judiciary Committee on May 8.

Contact members of Assembly Judiciary and urge them to **support AB 1505**.

For easy-to-use sample letters, visit www.calchambervotes.com.

Staff Contact: Kyla Christoffersen

Register by May 11

www.calchamber.com/legsummit07

California Business Legislative Summit

Monday, May 21, 2007

Guest Commentary

Business Owner Voices Disappointment at Defeat of Flexible Workweek Proposal

Note: The following letter was sent to Assemblyman André Swanson (D-Oakland), chairman of the Assembly Labor and Employment Committee, on April 25, in response to the committee's 3-5 vote rejecting the California Chamber of Commerce-sponsored flexible workweek bill, AB 510 (Benoit; R-Bermuda Dunes).

Dear Chairman Swanson:

Wednesday, April 18, I had the opportunity to testify before your Committee on Labor and Employment, urging you and your members to support AB 510, Assemblymember Benoit's bill providing much needed, and *wanted*, flexibility in scheduling workdays for individual employees. I appreciated the time that you gave to each of us who spoke on behalf of this important bill.

Needless to say, I was dismayed with the outcome. With one exception, the vote was strictly by party line with the Democrats voting against (except for Assemblymember Galgiani) and the Republicans voting in support of this bill. The union, of course, was quite vocal, stating that additional flexibility wasn't needed. Really, it is quite interesting to see them take positions against employees when they spend so much time and money alleging that they support them.

You see, as I said to you during my presentation, this bill is all about the employee. It is *individual employees* who are asking for flexibility in scheduling their workday because they do want or need more personal time. Study after study has shown that our new generations, Generation Xers and Ys, want more time away from work to spend with family and friends. They want time for other activities, whether attending school, caring for children or parents, or just spending time on hobbies, long weekends, travel and relaxing. Why would you be opposed to providing the flexibility that they ask for?

One of your members (Assemblymember Leno) and certainly the



Guest Commentary
By Ruth Evans

The alternative workweek provides some flexibility for companies . . . but it does not provide flexibility for individual employees.

unions, stated that the alternative workweek option provides all the flexibility needed. That is not true. The alternative workweek provides *some* flexibility for companies that can organize into work units, departments, groups, shifts — but it does not provide flexibility for *individual employees*.

Small employers, in particular, have employees asking for the opportunity to work 10-hour days, four days a week. Retail clerks, wait staff, hotel clerks, and other *individual employees* of small busi-

nesses and in particular small mom-and-pop operations, want this flexibility.

Rather than forcing employers to create some magical "unit" to allow one or two people the flexibility they desire, and/or need due to personal circumstances, why not provide them with the flexibility?

If you have a sandwich shop with four counter clerks and one wants to work four 10-hour days, why should the employer have to take it to a vote? And more importantly, why should all four counter workers have to work the same schedule?

The reason they have to take a two-thirds vote is because they all have to switch to the new schedule if it passes.

Why shouldn't we let the one worker who wants a 4-10 workweek work it out directly and individually?

(The answer is that the unions don't want to empower individual employees to negotiate directly with their employer — that's what unions are for.)

If two-thirds of those employees vote NO, then the one individual who wanted or needed that schedule loses.

My takeaway from this experience is that the outcome was preordained when we walked into the room, and that unions really are pretty much in control.

Why should they have such a big voice in representing non-union employees? What a shame when they represent such a small portion of working men and women in California. It is not the unions who create the jobs; it is the employers.

All we were asking for was the opportunity to meet the requests of *individual employees* who want flexibility in scheduling their workday.

Ruth Evans is the owner of The Evans HR GROUP, Fresno, a full-service HR management company providing HR consulting including policy development, recruiting, training, and counseling for companies throughout California.

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 Health Savings Account Bills



SUPPORT

The California Chamber of Commerce is **supporting** a number of bills that will create more options and flexibility for consumers when making health care coverage choices. Those bills include:

- **AB 84 (Nakanishi; R-Lodi)** and **SB 25 (Maldonado; R-Santa Maria)** bring California tax law into conformity with federal income tax laws by providing tax deductions for health savings accounts.

- **AB 85 (Nakanishi; R-Lodi)** and **SB 199 (Harman; R-Huntington Beach)** enables small and medium-sized employers that have not previously provided health insurance to take a 15 percent tax deduction for offering high-deductible health plans.

Health savings accounts allow individuals to save tax-free dollars to pay for near-term medical expenses and save for future longer-term medical costs.

California is one of five states that taxes contributions to health savings accounts. Consumers in 45 other states are able to make both federal and state

tax-free contributions to health savings accounts.

Federal law allows for tax-free contributions into health savings accounts for medical expenses. Up to 100 percent of the deductible amount of an accompanying high-deductible health insurance policy may be contributed to a health savings account by the account holder, the employer, or both. Funds are completely portable and may be carried over from year to year during a participant's lifetime.

Action Needed

AB 84 and AB 85 are scheduled to be heard May 7 by the Assembly Revenue and Taxation Committee.

SB 25 and SB 199 await a hearing date in the Senate Revenue and Taxation Committee.

Urge committee members and your legislators to **support** these bills.

Staff Contact: Marti Fisher

Hearing Set on CalChamber-Backed Boost in R&D Tax Credit



SUPPORT

California Chamber of Commerce-**supported** legislation that will strengthen California's economy by encouraging investments in California-based research and development (R&D) activities and jobs will be considered by the Assembly Revenue and Taxation Committee on May 7.

- **AB 751 (Lieu; D-Torrance)** increases California's R&D tax credit from 15 percent to 20 percent, increases the alternative incremental credit and adopts the alternative simplified credit in conformity with federal law.

California currently ranks first in the nation in R&D performance, accounting for more than one-fifth of total U.S. R&D. California universities rank number five in total R&D expenditures nationally. Nevertheless, California cannot afford to rest on its laurels.

The CalChamber believes that California needs to proactively maintain

and expand its leading edge in R&D innovation and talent, as it competes for R&D investments, jobs and knowledge capital, not only with other states, but other countries, like India and China, which are working aggressively to expand their innovation output.

Strengthening California's R&D credit will bolster R&D activity in California universities and industry, including aerospace, biotech, computer and high-tech. Boosting activity in these areas will stimulate the state's economy with additional investments and jobs and help California to maintain its R&D leadership.

Action Needed

Contact your Assembly representative and members of Assembly Revenue and Taxation and ask them to **support AB 751**.

Staff Contact: Kyla Christoffersen

Senate Committee Rejects Bond Funding for Much-Needed Water Storage

A Senate committee this week rejected California Chamber of Commerce-supported legislation to authorize a \$3.9 billion general obligation bond to finance new water storage facilities.

SB 59 (Cogdill; R-Modesto) failed to pass the Senate Natural Resources Committee on April 24 by a vote of 3-4.

SB 59 would have placed before voters a proposal to sell \$3.95 billion in general obligation bonds to finance surface and groundwater storage, water use efficiency, environmental restoration, and water quality projects in the state. The increased water storage is part of the Governor's strategic growth plan and also has the support of U.S. Senator Dianne Feinstein (D-San Francisco), Senator Dave Cogdill told committee members.

The bill would require the beneficiaries of storage to develop a shared financing plan before bond funds could be spent on storage.

Reasons to Support

Dominic DiMare, CalChamber vice president of government relations, urged the committee to support the bond measure, commenting that facilities cost less to build now than they will in the future.

Citing projections that the snow pack and water supplies in California are decreasing, DiMare said, "SB 59 is the type of measure that is necessary to adapt to the changing climate and the changing world around us by enhancing water storage in California. We think it's critical... We can't get there through conservation alone."

"We need storage. Not to build storage to adapt to these potential scenarios in the future would do a great disservice to future generations of Californians and also really have a very negative effect on the economy."

The water system that contributed to California's emergence as one of the world's major economic powers is failing. Additional water storage through new reservoirs and expanded underground storage capacity will help the state meet future demands. To help mitigate this problem, regional water storage projects have come on line to help combat current



Dominic DiMare, CalChamber vice president of government relations, speaks in support of SB 59 bond funding for water storage at a State Capitol press conference.

water shortages in drought scenarios. However, they do not address the need for increased water supplies to cope with future demands, or the need for operational flexibility due to early snow pack melt brought on by climate change.

Key Vote

The 3-4 Senate Natural Resources vote on SB 59 was:

Ayes: Cogdill (R-Modesto), Hollingsworth (R-Murrieta), Margett (R-Arcadia).

Noes: Kehoe (D-San Diego), Kuehl

(D-Santa Monica), Migden (D-San Francisco), Steinberg (D-Sacramento)

Absent, abstaining or not voting: Machado (D-Linden).

The CalChamber will continue to work with Senator Cogdill, Governor Arnold Schwarzenegger and other interested parties to ensure that the state has sufficient facilities to capture, retain and convey the water needed to support California's growing population and economy.

Staff Contact: Dominic DiMare

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